

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original Amendment _____
Correction _____ Substitute _____

Date 24 January 2024
Bill No: HB 152-280

Sponsor: William "Bill" R. Rehm
Short DWI Changes
Title: _____

Agency Name and Code Number: 280-Law Offices of the Public Defender (LOPD)
Person Writing: Kate Baldridge
Phone: 505-395-2890 Email: Kathleen.baldridge@lopnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 152 is a duplicate of HB 484 (2023), and is similar to past bills HB 187 (2021), HB 38 (2020), HB 317 (2019), HB 34 (2018), HB 22 (2017), HB 44 (2016), HB 120 (2015), HB 190 & 191 (2014), and possibly other bills from prior years.

HB 152 would alter the law of Driving Under the Influence in New Mexico, specifically as it relates to commonly used non-prescription drugs and prescription cannabis. HB 152 would prohibit driving with *any concentration* of delta-9-tetrahydrocannabinol or delta-9-tetrahydrocannabinol metabolite or a controlled substance or metabolite concentration as opposed to driving with per se levels or limits of drugs in the driver’s system to qualify him or her as under the influence, i.e., impaired.

HB 152 removes text from Section 66-8-102(B), which relates to DUI by drugs, not alcohol. The amendment would strike the requirement that a person be under the influence of a drug “to a degree that renders the person incapable of safely driving.”

HB 152 also proposes to amend Sections 66-8-110 and 66-8-111, governing the administrative revocation rules for driver’s licenses, to comport with these changes. HB 152 would amend 66-8-102(O) to remove drug DUI offenders from the ignition interlock requirements.

HB 152 would go into effect ninety (90) days after the adjournment of the legislature.

FISCAL IMPLICATIONS

Because HB 152 would prohibit *any concentration* of the above-mentioned drugs, it is likely to involve blood testing, which will ordinarily implicate the warrant process, because warrantless DUI’s based on chemical tests for blood will be subject to constitutional challenges under *Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016).

To the extent that the bill would increase the number of warrants for blood draws in the State, the immediate fiscal impact will likely fall on the judiciary and hospitals. Over time, as the blood draws might lead to more DWI cases being charged, that could lead to an increase in LOPD caseload.

DWI detection efforts would likely remain status quo, but filed charges would likely increase if there is no measurement of impairment for drugged driving. Accordingly, more court challenges would occur with respect to drugged driving cases, resulting in a substantial increase in trials, which would increase LOPD workload and resources, necessitating additional attorneys, staff, investigators, and social workers. Commensurately, prosecution offices and courts would also see an increase in workload and resource expenditure.

When a DWI case based on blood testing proceeds to trial, the prosecution generally needs the additional testimony of the individual who drew the blood, the Scientific Laboratory Division technician(s) who tested the blood, the reviewer who ensured the proper laboratory procedures were followed and an expert to testify regarding the presence of the particular drug in the driver's system.

Effective defense requires engagement of defense experts in many such cases. Pursuant to *State v. Schoonmaker*, 2008-NMSC-010, and *State v. Brown*, 2006-NMSC-023, LOPD is required to pay for expert services of indigent individuals who are privately represented upon receipt of a court order. Any increases in expert witness contracts brought about by the proposed legislation together with the cumulative effect of all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

Accurate prediction of the fiscal impact would be impossible to speculate. However, these cases would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), or higher (Trial Attorneys). A mid-level felony capable Associate Trial Attorney's mid-point salary *including benefits* is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas. A senior-level Trial attorney's mid-point salary *including benefits* is \$149,063.13 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126,722.33.

SIGNIFICANT ISSUES

See Fiscal Impact.

In addition, "While alcohol concentration (BAC or BrAC) is an accurate measurement of alcohol impairment of driving, the presence of THC in the driver's body has not been shown to be a reliable measure of marijuana impairment of driving." Compton, R. (2017, July). Marijuana-Impaired Driving - A Report to Congress. (DOT HS 812 440). Washington, DC: National Highway Traffic Safety Administration. Available online at: <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>

Moreover, HB 152 would effectively criminalize driving by any habitual user of marijuana, whether or not they had recently ingested the substance and without regard to whether they were actually impaired. "Substantial whole blood THC concentrations persist multiple days after drug discontinuation in heavy chronic cannabis users." Erin L. Karshner et al, "Do Δ 9-Tetrahydrocannabinol Concentrations Indicate Recent Use in Chronic Cannabis Users?", *Addiction*. 2009 Dec; 104(12): 2041–2048. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2784185/>

PERFORMANCE IMPLICATIONS

See above.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo – Status quo: Driving while under the influence of drugs will continue to be a crime, but it requires evidence of impairment.

AMENDMENTS

None