LFC Requester:	Scott Sanchez

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

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:					**Date Prepared**:	1/23/2024
Original	X	**Amendment**			**Bill No**:	HB 152
Correction		**Substitute**				

Sponsor:	Rep. W. Rehm	**Agency Name and Code Number:**	305 – New Mexico Department of Justice
Short Title:	DWI CHANGES	**Person Writing Analysis:**	AAG Meryl Francolini
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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

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB 152 proposes to change the standard for the offense of driving while under the influence (DWI) of drugs to an impaired to the slightest degree standard. It would amend NMSA 1978, § 66-8-102(B) to provide that it is unlawful for a person to drive a vehicle while "under the influence" of any drug. It removes the qualifying language that the person must be under the influence "to a degree that renders the person incapable of safely driving a vehicle." By deleting the qualifying language and retaining the phrase "under the influence," the standard for proving that a defendant is guilty of DWI by drugs would be lowered from its current standard that the offender must be under the influence "to a degree that renders the person incapable of safely driving a vehicle" to a standard that the offender must be impaired to the slightest degree. *See United States v. Aguilar*, 301 F. Supp. 2d 1263, 1271 (D.N.M. 2004) ("A person is "under the influence" within the meaning of the DWI statute "if 'as a result of drinking liquor [the driver] was less able to the slightest degree, either mentally or physically, or both, to exercise the clear judgment and steady hand necessary to handle a vehicle with safety to [the driver] and the public.'").

HB 152 also proposes to amend NMSA 1978, § 66-8-110(C) to require an officer to charge an individual with DWI when the blood or breath test administered pursuant to the Implied Consent Act contains "any concentration" of alcohol, THC, THC metabolite, a controlled substance, or a controlled substance metabolite. Section 66-8-110(C) currently provides that an arresting officer is required to charge an individual with DWI only where a blood or breath test reveals a concentration of alcohol higher than the per se limits for DWI (.08 BAC or .04 BAC for a commercial vehicle), and it does not apply at all to drug-related DWI.

HB 152 also adds language to Section 66-8-102(O) providing that the ignition interlock requirement for DWI convictions only applies to offenders with alcohol concentrations. It also amends 66-8-102(P) to allow an offender convicted of a fourth or subsequent offense to apply for a full restoration of their driver's license after five years.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

HB 152 strikes the language in Section 66-8-102(B) which states that a driver cannot operate a vehicle under the influence of drugs "to a degree that renders the person incapable of safely driving a vehicle." This deletion leaves the law to state that "[i]t is unlawful for a person who is under the influence of any drug to drive a vehicle within this state." The effect of this amendment would be to lower the standard for proving that a defendant is guilty of DWI by drugs to a standard that the offender must only be impaired to the slightest degree. Further, a "drug" as defined by the International Association of Chiefs of Police ("IACP"), and used by prosecutors and law enforcement nationwide, is "[a]ny substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely." The term "drug" can mean allergy medications, caffeine, antibiotics, antidepressants, etc. that when taken in unusually large quantities can affect a person's ability to drive. Based on the broad scope of the term "drug" and the significantly lowered standard for impairment, this bill could present a significant burden for prosecutors and law enforcement when determining whether or not to arrest and charge someone with DWI.

Moreover, the amendment to Section 66-8-110(C) to require an arresting officer to charge an individual with DWI when a blood or breath test administered pursuant to the Implied Consent Act contains "any concentration" of alcohol, THC, THC metabolite, a controlled substance, or a controlled substance metabolite could lead to arrests and charges unsupported by probable cause. DWI is not a strict liability offense, and it requires the State to prove that the offender is driving with a concentration of alcohol above per se limits, is impaired to the slightest degree by alcohol, or is under the influence of drugs (impaired to the slightest degree under this current amendment). This bill would require an officer to arrest and charge a defendant who has "any" concentration of alcohol or drugs in their system with DWI, irrespective of whether the blood or breath test actually quells the officer's reasonable grounds for administering a test, that is the belief that the defendant is impaired to the slightest degree by drugs or alcohol and above per se alcohol limits. For example, an officer would be required to charge a defendant with DWI where a defendant's breath test reveals an exceedingly low concentration of alcohol on a breath test, such as .01 BAC, even if that low concentration on the test led to the officer to believe that he lacked probable cause that alcohol was impairing the defendant to any degree. It removes the discretion from an officer to determine probable cause.

PERFORMANCE IMPLICATIONS
N/A

ADMINISTRATIVE IMPLICATIONS
N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 55 (creating the Oral Fluid Roadside Detection Pilot Project to test for the presence of drugs when a driver is stopped for suspicion of DWI)

TECHNICAL ISSUES
N/A

OTHER SUBSTANTIVE ISSUES
N/A

ALTERNATIVES
N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status quo.

AMENDMENTS
N/A