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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/10  
 LAST UPDATED 02/10/10    **HB** \_\_\_\_\_

SPONSOR Wirth

SHORT TITLE DWI Plea Agreements & Refused Chemical Tests    **SB** 4

ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1.0 to \$200.0 *	\$1.0 to \$200.0*		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Relates to HB 46, HB 65, HB 115, HB 139, HB 187, HM 207, SB 3, SB 5, SB 32, SB 151, SB 170 & SB 176

\*See Fiscal Implications. DOT has provided information disagreeing with these estimates.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General's Office (AGO)
- Department of Public Safety (DPS)
- Governor's Office (GO)
- Health Policy Commission (HPC)
- Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 4 enacts an additional provision to Section 66-8-102.1 NMSA 1978 regarding limitations on guilty pleas where a complaint or information alleges a violation of Section 66-8-102 NMSA 1978. Section 66-8-102 NMSA relates to driving under the influence of intoxicating liquor or drugs, aggravated driving while under the influence of intoxicating liquor or drugs and the penalties.

Under the statute as written, when a complaint or information alleges a violation of Section 66-8-102 NMSA 1978, any guilty plea thereafter entered in satisfaction of the charges shall include at least a plea of guilty to a violation under the statute if the results of a test performed under the Implied Consent Act disclose a specified alcohol concentration. The new Subsection B in SB4

adds the alternative, “or the person refuses to submit to a chemical test authorized by the Implied Consent Act.” Pursuant to SB4, in either case a guilty plea shall include a plea of guilty to a violation of the statute.

## **FISCAL IMPLICATIONS**

DOT provided the following:

SB 4 closes an existing loophole by prohibiting plea agreements outside the DWI statute for those who refuse a chemical test. The current statute prohibits plea agreements for those who test over a .08 but is silent on the issue of refusals. This issue has come forth as a result of a TSB court monitoring project, which observed a number of cases where refusals are being plead down to careless or reckless driving. We do not expect a significant fiscal impact from the passage of this bill because the revised statute would still allow for pleas within the DWI statute.

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The provisions in this bill may cause fewer pleas and more trials.

## **SIGNIFICANT ISSUES**

The AGO has noted that there is some unsettled question as to whether such a restriction violates the discretionary decision of a district attorneys to bring charges and to decide what those charges will be. In *State v. Brule*, 127 N.M. 368 Judge Bosson observed in his dissent that it is the district attorney who is elected by the people of this state to decide this very question of what charges to bring and what people to prosecute in the best interest of the people of the State of New Mexico.

The AGO further states that the legislature certainly has the authority to limit the sentencing authority of judges, but it has long been held that restrictions on the charging decisions of prosecutors are an unconstitutional violation of separation principles under Article III.

The Governor’s Office provided the following:

The bill closes a loophole by prohibiting plea agreements outside the DWI statute for those who refuse a chemical test. The current statute prohibits plea agreements for those who test over a .08 but is silent on the issue of refusals.

MADD, through its court monitoring project with the State has observed that some magistrate judges are using this loophole in the current statute that allows offenders to plead DWIs down to reckless or careless driving if they **refuse** to provide a blood or breath sample. DWI offenders in some counties are refusing to provide a breath sample because they are able to plea to a lesser offence.

## **ADMINISTRATIVE IMPLICATIONS**

The agencies affected by this bill can handle the provisions of this bill with existing staff as part of ongoing responsibilities.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 4 relates to:

- HB 46, DWI Chemical Test Fees
- HB 65, Increase Certain Vehicular Homicide Penalties
- HB 115, DWI License Revocations & Interlocks
- HB 139, Expungement of Certain DWI Records
- HB 187, Certain Drugs in Blood Stream as DWI
- HM 207, Interlock Fund Eligibility
- SB 3, DWI Incarceration Requirements
- SB 5, Increase DWI Penalties & Fines
- SB 32, DWI Chemical Test Fee Increase
- SB 151, Minimum Concentration for DWI
- SB 170, Ignition Interlock License Plates
- SB 176, Use of DWI Convictions for Sentencing

## **OTHER SUBSTANTIVE ISSUES**

New Mexico has dropped out of the top-ten ranking for DWI fatalities according to statistics released by the National Highway Traffic Safety Administration. New Mexico, which once had the worst DWI problem in the nation, is now out of the top-ten in all national rankings. New Mexico dropped to 11th in the nation for the number of DWI fatalities per 100,000 population in 2008. New Mexico was ranked 9th in the nation for DWI fatalities in both 2006 and 2007. In 2006, New Mexico dropped from 9th to 18th in the rate of alcohol involved fatalities based on 100 million motor vehicle miles traveled.

DW/svb:mew