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FISCAL IMPACT REPORT

ORIGINAL DATE 03/02/11

SPONSOR Cravens LAST UPDATED _____ HB _____

SHORT TITLE Chemical Tests with Probable Cause of DWI SB 387

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Unknown See Below	Unknown See Below	Unknown See Below	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 306, SB 307, SB 308, SB 405, SB509, HB 49, HB 183, HB 263, HB 325, HB 329, HB 330, HB 357 & HB 392

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Department of Health (DOH)
 Department of Public Safety (DPS)
 Department of Transportation (DOT)
 Public Defender Department (PDD)
 Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of Bill

Senate Bill 387 amends Section 66-8-111 to allow a law enforcement officer to request a court to issue a search warrant for blood when there is probable cause to believe that the person has driven a motor vehicle while under the influence of alcohol or a controlled substance. This will allow law enforcement to obtain a search warrant for blood in misdemeanor DWI cases.

FISCAL IMPLICATIONS

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.

This will increase the workload of the judiciary in that every DWI case that is charged as an aggravated DWI with a refusal will now have the opportunity to obtain a search warrant for a blood test. Though the requests for search warrants will undoubtedly increase, there is the possibility that based on the results of the blood test, there will be more plea agreements instead of trials. The costs at this time are unknown.

There is no agreement among the responding agencies about fiscal impact on the criminal justice system or law enforcement agencies.

SIGNIFICANT ISSUES

Currently if a suspect in a misdemeanor DWI case refuses a blood test, law enforcement cannot request one from the court. The law only allows search warrants for blood when there is probable cause for a homicide or great bodily injury by DWI or that a person has committed a felony while under the influence of alcohol or drugs and that the blood test will produce material evidence for prosecution.

The AOC notes that it is unclear what will happen with the charge of aggravated DWI with a refusal if there is the ability to get a blood test by search warrant. If the blood test returns, for instance, with a blood alcohol level of over .16, there is then the basis for the other type of aggravated DWI. There could be confusion in charging these cases. Additionally, it is unclear how this will affect the Implied Consent Act which allows for a refusal with the consequences of one's license being revoked. If a person refuses and then a search warrant is obtained for a blood test, should the refusal have any legal consequences? These are the types of legal issues that may be litigated.

PDD provided the following:

It appears that there were approximately 5,160 DWI cases filed in Bernalillo County Metropolitan Court in 2010. Statistics are not available, but it is estimated that from 10% to 30% involve alleged refusals. Most DWI arrests take place late at night or in the early morning hours. It would place an undue burden on the misdemeanor court judges to review and approve warrants for refusals in the middle of the night every night. Moreover, especially in rural areas, it is questionable whether an officer will be able to obtain a warrant and get either a breath test or a blood draw within three hours of the stop as required by law.

Furthermore, Scientific Laboratory Division (SLD) must conduct the blood analysis. The increased demand on SLD blood analysis will mean an increased delay in getting results. The delay can potentially lead to more dismissals because the state will not be ready for trial while still waiting for the test results.

It is true that the legislature has made driving a privilege, and that persons who drive in New Mexico are deemed to have given consent to be tested, NMSA 1978, § 66-8-107; however, at the same time, the legislature recognized the intrusiveness of blood tests when it mandated that warrants for blood tests would only be issued in cases where the

person is accused of causing death or great bodily injury by vehicle or committing another felony while intoxicated. There is already a significant penalty for refusals.

Expanding search warrant authorization has been recommended by the National Highway Traffic Safety Administration (NHTSA) to decrease the number of alleged DWI offenders who refuse chemical tests. NHTSA had called this a “No Refusal Strategy.” In 2005, 18% of the alleged DUI offenders in New Mexico refused testing, according to NHTSA in its report, Refusal of Intoxication Testing: A Report to Congress.

DOT notes that according to NHTSA, states that have adopted the “No Refusal Strategy” programs report more guilty pleas, fewer trials and more convictions. States currently utilizing the initiative include Texas, Louisiana, Florida, Kansas, Missouri, Illinois, Utah, Idaho and Arizona.

ADMINISTRATIVE IMPLICATIONS

DPS indicated that they could handle the provisions of this bill as part of ongoing responsibilities.

Law enforcement agencies will need to develop policies to guide officers when investigating “refusal” DWIs in order to determine when one should pursue a warrant for blood.

RELATIONSHIP

SB 387 relates to the following DWI bills:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 306, Home Breathalyzer for Certain DWI Offenders
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 308, Interlock Regulations for DWI Offenders
- SB 387, Chemical Tests with Probable Cause of DWI
- SB 405, DWI and Drug Standards Clarification
- SB 509, No Car Interlock for Certain Convictions
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 183, DWI First Offender Follow-Up Program
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases
- HB 325, Make DWI Death a Serious Violent Felony
- HB 329, Consistent Felony DWI Convictions
- HB 330, Penalty Increase for DWI Offenders
- HB 357, Homicide by Boat & Great Bodily Harm by Boat
- HB 392, DWI Alcohol Concentration Levels