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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/11

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE DWI and Drug Standards Clarification SB 405

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$240.0	\$240.0	\$480.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: Relates to SB 3, SB 127, SB 197, SB 306, SB 307, SB 308, SB 387, HB 49, HB 183, HB 263, HB 325, HB 329, HB 330 & HB 392

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)
 Corrections Department (CD)
 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 405 amends Section 66-8-102 NMSA to specify that it is unlawful for a person to drive a vehicle in this state when the person is under the influence of intoxicating liquor, one or more drugs, or a combination of intoxicating liquor and one or more drugs to a degree that renders the person incapable of safely driving a vehicle.

SB 405 also specifies that when a person driving a commercial motor vehicle has refused to submit to chemical testing as provided in the Implied Consent Act, it shall be presumed that the person was under the influence of intoxicating liquor or drugs to a degree that rendered the person incapable of safely driving a vehicle.

FISCAL IMPLICATIONS

Amendments to existing laws have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. The AOC is currently working on possible parameters to measure resulting case increase. There will also be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

DOH claims that if SB405 were passed, the Scientific Laboratory Division estimates a 30% increase in requests for drug testing by law enforcement in cases where the breath test indicates a blood alcohol concentration of less than .08 g/dl, because such an individual would not be allowed to be prosecuted unless other drugs were present in his/her system. This increased volume of requests for drug analysis for breath alcohol tests less than 0.08 g/dl from the current volume could require up to 3 additional chemist positions at the laboratory to perform the tests and provide expert testimony in court.

The average cost of a drug test by the Scientific Laboratory Division is \$200 per case. At an estimated 30% in workload, an additional cost of \$240,000 per year could be needed--\$160,000 for additional chemists and \$80,000 for testing supplies if law enforcement agencies requested additional drug tests on all individuals who blow less than 0.08 g/dl on the breath analyzer, rather than on a portion of them as is currently the case.

SIGNIFICANT ISSUES

Current law specifies it is unlawful to drive when “under the influence of any drug to a degree that renders the person incapable of safely driving a vehicle.” The bill replaces “any drug” with the inclusion of alcohol or a combination of drugs and alcohol.

The AGO states currently, there are two ways to prosecute alcohol and other drug impaired drivers in New Mexico. Law enforcement can arrest on two theories- slightest degree of impairment or .08 blood alcohol concentration (bac) theory. Prosecutors can then prosecute on those same theories. If the slightest degree of impairment theory was eliminated as a way to arrest or prosecute drivers on the roads, New Mexico would be faced with more significant injuries and more fatal crashes.

DPS states this bill will do away with one avenue to prove and prosecute DWI in New Mexico. Law enforcement can now arrest a suspect for DWI if the suspect is impaired to the “slightest degree” or if the suspect has a BAC at the per se limit of .08. Prosecution is based on these standards as well. The language of this bill appears to weaken the ability to prosecute DWI successfully by eliminating the “slightest degree” standard and replacing it with the “a degree that rendered the person incapable of safely driving a motor vehicle.” This appears to be a higher standard of proof, but does not appear to be any clearer than the slightest degree standard.

DOT provided the following:

SB 405 expands law enforcement’s ability to test and bring DWI actions against drivers of commercial motor vehicles.

Under the existing statute and this bill, New Mexico will continue to meet the Federal Motor Carrier Safety Act (FMCSA) requirements for certain federal funding. The FMCSA requires a state to have a 0.04 alcohol concentration standard for drivers of commercial vehicles.

DOH notes the state’s current DWI laws and their enforcement helped contribute to a nearly 40% decrease in alcohol-impaired motor vehicle crash fatalities in the last 5 years.

On the other hand, the PDD states that the courts have struggled to give meaning to what constitutes driving while “under the influence”. This has resulted in inconsistent interpretations by juries and the courts in cases involving only alcohol intoxication. This bill will provide a concrete meaning for “under the influence”. The language in this bill is “to a degree that renders the person incapable of safely driving a vehicle”. This is the current standard for drugs. Applying this single standard will encourage much more consistency. This is consistent with US constitutional mandate that there be equal justice under the law.

ADMINISTRATIVE IMPLICATIONS

The original subsection A, addressing alcohol and subsection B, addressing drugs have been combined into a new paragraph applying to both the standard of influence “to a degree that rendered the driver incapable of safely driving a vehicle.” This standard is heightened from the “impaired to the slightest degree” standard, and may decrease court filings in cases where the driver’s alcohol limit was below .08.

RELATIONSHIP

SB 405 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 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 392, DWI Alcohol Concentration Levels

TECHNICAL ISSUES

The AOC notes that Section 66-8-110 is amended in subsection B to add drugs as a possible contributor, along with intoxicating liquor, to a person’s inability to safely drive a vehicle. The addition of drugs as a possible contributor is not consistent through the rest of the section, as it is not included in subsections G and H. This omission could lead to confusion, specifically with subsection G as that indicates the “presumptions in subsection B and C...do not limit the introduction of other competent evidence concerning whether the person was under the influence of intoxicating liquor.” The omission suggests that other evidence indicating the person was under the influence of drugs may not be considered or allowed.

OTHER SUBSTANTIVE ISSUES

DOH provided the following:

The National Highway Traffic Safety Administration (NHTSA) has conducted several reviews of the scientific literature on the effects of low-doses of alcohol on driving-related behavior and concluded repeatedly that “impairment of some driving-related skills begins with any departure from zero blood alcohol concentration. In addition, NHTSA states that it seems that there is no lower threshold level below which impairment does not exist for alcohol.

A second area in which SB 405 may also hinder efforts to prosecute individuals for DWI would be in instances where the impaired driving was caused by a combination of low levels of alcohol mixed with other drugs. This scenario is seen for approximately 30% of blood samples received by the Scientific Laboratory division for analysis for DWI. Alcohol interacts synergistically with many other impairing drugs, producing impairment that is greater than the sum of the individual effect of the alcohol plus the drug. If SB405 prevents the prosecutor from including the low (less than 0.08 g/dl) alcohol level in his/her case by arguing the low level of alcohol were not, taken by itself, impairing and should be excluded the toxicology expert witness could, at times, be unable to explain the cause of the observed impaired driving behavior using only the partial information on the drug present.

The National Institute on Alcohol Abuse and Alcoholism has noted in one of its studies:

The many skills involved in driving are not all impaired at the same bac. For example, a driver’s ability to divide attention between two or more sources of visual information can be impaired by a bac of .02 percent or lower. However, it is not until a bac of .05 percent or more is reached that impairment occurs consistently in eye movements, glare resistance, visual perception, reaction time, certain types of steering tasks, information processing and other aspects of psychomotor performance.

The American Medical Association has established a .05 bac standard as the legal standard for intoxication for the general population of adult drivers. The international trend also continues to be to reduce illegal per se limits to .05 bac or lower. The countries where .05 bac is the *per se* limit include Australia, Belgium, France, Germany, Israel, the Netherlands, Portugal and Spain. Russia, Sweden and Norway have a .02 bac per se limit and Poland has a .03 bac per se limit.

Laboratory studies from these countries indicate that impairment in critical driving functions begins at low bacs. Most subjects in these studies were significantly impaired at .05 bac with regard to visual acuity, vigilance, drowsiness, psychomotor skills and information processing.

DW/mew