

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rehm **ORIGINAL DATE** 2/8/16
LAST UPDATED _____ **HB** 44
SHORT TITLE DWI for Certain Drugs and Interlocks **SB** _____
ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$88.9	\$93.4	\$182.3	Recurring	GF

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB81, HB82, HB83, SB45, HB74
Conflicts with HB74

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
Department of Public Safety (DPS)
Attorney General's Office (AGO)
Administrative Hearing Office (AHO)
New Mexico Corrections Department (NMCD)
Taxation and Revenue Department (TRD)
Administrative Hearing Office (AHO)

SUMMARY

Synopsis of Bill

House Bill 44 amends Section 66-8-102, NMSA 1978, to prohibit driving with certain amounts of controlled substances or metabolites in the blood, in addition to amending the requirement for offenders to obtain an ignition interlock device upon conviction, to apply only to offenders who were "driving under the influence of intoxicating liquor or who had alcohol concentration in the blood or breath and the alcohol concentration resulted from alcohol consumed before or while driving."

It specifies amounts for nine common controlled substances or their metabolites that if found within a person's blood within three hours of driving would constitute *per se* violations of driving while intoxicated ("DWI") statute. The nine substances are: amphetamine; cocaine; cocaine metabolite, cocaethylene; heroin; heroin metabolite, morphine; heroin metabolite, 6-monoacetylmorphine; the active ingredient in marijuana, delta-9-tetrahydrocannabinol; methamphetamine; and, 3,4-methylenedioxymethamphetamine.

FISCAL IMPLICATIONS

The AHO reports that HB44 will have a fiscal impact because it adds an additional category of Implied Consent Act violations not previously included under that act, which could significantly increase the volume of Implied Consent Act hearings adjudicated by the Office.

The AHO used the 2013 DWI arrest statistics from DOT which showed a total of 12,642 DWI arrests. A 2013 DOH report shows that 12.2% of DWI offenses involve the primary use of drugs other than alcohol. Applying DOH rate to the number of arrests in 2013, there is a possibility of 1,542 additional Implied Consent Act violations under the legislation that previously would not have been subject to the Implied Consent Act. Approximately 30% of those arrested typically request a hearing. However, given that this would be a new law not previously applied in New Mexico, a larger percentage of arrested drugged-drivers are likely to request a hearing. The AHO applied 40% of those arrested pursuant to HB44 would request a hearing resulting in an additional 616 Implied Consent Act license revocations per year. Currently, each hearing officer adjudicates about 600 cases per year. The estimated increase to the AHO under HB44 is one FTE.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) is an average of \$123 per day, or about \$45,250 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

The PDD anticipates little fiscal impact resulting from this bill; however, cumulative enactment of proposed criminal legislation may require an increase to the indigent defense funding to provide legal services.

DPS reports that enactment of this bill will increase officer time for court appearances but does not quantify the increase.

SIGNIFICANT ISSUES

According to AOC, establishing statutory limits for certain controlled substances or metabolites in the blood would reduce the uncertainty inherent in the “impaired to the slightest degree” standard (currently in the law) and allow for much more efficient processing of DWI cases, where those limits are found in a driver’s blood. Moreover, HB44 does not provide for alternative means by which a non-alcohol offender may operate a motor vehicle prior to the expiration of their license revocation period, and since it does not prohibit those offenders from obtaining an ignition interlock license, many such offenders may still elect to do so, in order to continue operating a motor vehicle. Whether courts continue to monitor compliance with the interlock device for those offenders who are not statutorily required to install one on their motor vehicle, would be within their discretion.

The AODA opines that HB44 would provide a clear standard for at least nine of the most common drugs that would be a *per se* violation of the DWI statute, similar to the *per se* alcohol limits of .08, and .04 for commercial motor vehicles. Having a clear standard should reduce the need for expert testimony and argument that is frequently required to interpret the relationship between the drugs found in a person’s blood and their behavior that a law enforcement officer believed made them incapable of safely driving a motor vehicle.

AODA further states that the nine substances listed are some of the drugs most commonly used but other drugs which are abused are not included within the list. There is also no mention of any synthetic drugs, e.g., “Spice,” “K2,” and “bath salts.” There are no limits specified for any poly-drug combinations which might be below the individual specified amounts but in combination could cause significant impairment. It is not uncommon to find someone also using alcohol with drugs which in combination can result in impaired driving.

The AGO reports that removal of “to a degree that renders the person incapable of safely driving a vehicle” from §66-8-102(B) could lead to the interpretation that if you are driving with any drug in your system you are in violation of §66-8-102(B). This could call into question the constitutionality of §66-8-102(B) and its overall purpose and intent.

Additionally, the AGO states that it is unclear whether having any drug, at any level in your system, while driving unlawful or whether it is only unlawful, when you have one of the nine (9) drugs/metabolites in your blood, at/or above the “per se” level, within three hours of driving.

Moreover, HB44 appears to imply that if a person has any alcohol concentration in their breath or blood they must be charged. This may conflict with §66-8-110(B) because 66-8-110(B) states that if a person’s alcohol concentration is less than four one hundredths, that person is presumed not under the influence of intoxicating liquor. HB44 thus improperly establishes that a person presumed not under the influence of intoxicating liquor must still be charged.

PERFORMANCE IMPLICATIONS

The AHO opines that the potential increase of license revocation hearings will impact its ability to timely set and hold hearings by the strict 90-day statutory deadline, one of its outcome performance measures.

ADMINISTRATIVE IMPLICATIONS

According to AHO, Section 4 of HB44 would change 66-8-111.1 to require law enforcement officers to serve notice of revocation on drivers before they have blood alcohol test results, triggering the 90-day requirement at the time of the arrest. This is different from the current system, where an officer only serves results upon a refusal or upon a breath test with a result above the legal limit. For blood tests, where an officer cannot know the results in the field until DOH Scientific Laboratory Division completes its required analysis, it is MVD that serves the NOR upon receipt of DOH Scientific Laboratory Division blood analysis reports. First service of the notice of revocation triggers the 90-day hearing requirement, meaning that if an officer immediately serves the notice of revocation before the blood alcohol tests results from DOH Scientific Laboratory Division are known, in many of these drugged-dwi cases the 90-day jurisdictional limit will have run before DOH Scientific Laboratory Division is able to return the chemical analysis results. Trying to schedule these hearings while waiting for DOH Scientific Laboratory Division results puts a large administrative burden on AHO, and presumably also MVD and DOH Scientific Laboratory Division. Additional hearings will incur additional travel related expenses, office-support, technology costs.

According to the AOC, establishing statutory limits for impairment by certain amounts of controlled substances or metabolites in the blood may reduce DUI case processing times, as the parties will be more certain of cases that may result in conviction when there are blood test results. Therefore, parties may be more likely to negotiate plea agreements earlier in the case, and there will be less need for extended pretrial hearings and expert testimony to establish levels for impairment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB74, in that HB74 would still require an ignition interlock device for any offender, and proposes new time periods for compliance with the interlock requirement, based on blood or breath alcohol concentration.

Relates to HB 74, in that they are both dealing with DWI/DUI offenders and license revocation and reinstatement requirements.

Relates to HB 81 and HB 83 – Increase Certain DWI Penalties; HB 82 – Habitual Offender DWI Sentencing, and SB 45 – Create Crime of DWI with Minor in Car; SB118- Increase DWI Penalties

OTHER SUBSTANTIVE ISSUES

Changing the interlock requirement to only offenders who had alcohol in their system at the time of driving may reduce the courts’ need to monitor ignition interlock compliance as a condition of probation for offenders who had no alcohol in their system at the time of driving. However,

given that the bill does not allow for any alternative method for non-alcohol offenders to drive prior to the expiration of their revocation period, many offenders may elect to obtain an interlock license in order to keep driving.

ALTERNATIVES

AHO suggests making no changes to 66-8-111.1, which would continue MVD to serve Notice of Revocation upon receipt of a DOH Scientific Laboratory Division blood analysis showing a blood-drug level above the prescribed limits.

ABS/jle