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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/18

SPONSOR Rehm LAST UPDATED _____ HB 34

SHORT TITLE DWI Blood Quantums & Ignition Interlocks SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate increase see Fiscal Implications	Indeterminate increase see Fiscal Implications	Indeterminate increase see Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB50, HB54, HB71, SB26

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)
- Administrative Hearing Office (AHO)
- Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 34 (HB34) proposes to amend Section 66-8-102, NMSA 1978, to prohibit driving with certain amounts of controlled substances or metabolites in the blood within three hours of driving a vehicle regardless if the controlled substance was consumed before or while driving. The bill requires offenders to obtain an ignition interlock device upon conviction of having a controlled substance in the blood, and allows the offender to apply to the district court for restoration of a driver's license after the fourth or subsequent conviction.

It specifies 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.

The effective date of the provisions in this bill should it become law is July 1, 2018.

FISCAL IMPLICATIONS

The Public Defender Department (PDD) states that the proposed legislation might result in an increased need for expert defense testimony. The addition of the “per se” levels may induce law enforcement to seek blood testing more often in an attempt to get more convictions (i.e. where evidence of impairment is slight). Pursuant to *State v. Schoonmaker*, 2008-NMSC-010, and *State v. Brown*, 2006-NMSC-023, LOPD is required to pay for expert services of indigent individuals who are privately represented upon receipt of a court order. Any increases in expert witness contracts brought about by the proposed legislation together with the cumulative effect of all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

The Administrative Hearing Office (AHO) anticipates a potential for a significant increase in the volume of Implied Consent Act hearings it adjudicates because the bill proposes to add an additional category of Implied Consent Act violations not previously included. It states that it is difficult to quantify the exact number of additional hearings.

However, using the New Mexico Department of Transportation’s DWI arrest statistics from 2015, there were a total of 9,568 DWI arrests. A 2014 report from N.M. Health shows that 12.2 percent of DWI offenses in 2013 involved the primary use of drugs other than alcohol. Applying this 12.2 percent rate to the total number of arrests in 2015, there is a possibility of 1,167 additional Implied Consent Act violations under this bill. Approximately 30 percent 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. AHO estimates that 40 percent of those arrested under the new drugged-driver provisions of this bill will request a hearing, possibly resulting in an additional 467 Implied Consent Act license revocations per year. This is equivalent to one additional FTE hearing officer (hearing officers currently adjudicate around 408 cases per year). Adding one hearing officer at the AHO would cost approximately \$108.8 thousand annually, plus \$2,500 for nonrecurring expenses to add the FTE.

There would be no significant reduction to the number of hearings due to the elimination of the provision under the Implied Consent Act for the revocation of licenses for persons driving commercial vehicles with blood or breath alcohol levels between .04 and .08. Such cases are extremely rare and average less than one or two hearings per year.

SIGNIFICANT ISSUES

According to PDD, “per se” standards may be subject to constitutional challenge. One possible argument is that they create ‘status’ offenses that penalize addiction without adding to the legislature’s interest in traffic safety. This is particularly true for low limits set for THC. For example, such a challenge was raised in federal case but not ruled on by the court in *U.S. v. Reed*, 878 F.Supp.2d 1199 (D. Nevada, 2012).

The Administrative Office of the Courts (AOC) believes that 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, HB34 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 Administrative Office of the District Attorneys (AODA) states that the bill provides a clear standard for at least nine of the most common drugs that would constitute a *per se* violation of the DWI statute, similar to the *per se* alcohol limits of .08 for adults, .02 for minors, and .04 for drivers of 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. Although the bill lists common drugs, it does not 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.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

According to AHO, based on its analysis of a potential increase of 467 Implied Consent Act license revocation hearings, AHO's ability to timely set and hold hearings by the strict 90-day statutory deadline, one of our essential performance measures. To continue to meet that statutory requirement and performance measure bench mark, it is anticipated that AHO will need an additional FTE hearing officer.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with HB50 Homicide & Bodily Harm by Boat

HB54 Increase DWI Penalties

HB71 DWI Suspect Blood Testing

SB26 DWI Testing Requirements

OTHER SUBSTANTIVE ISSUES

PDD states that the phrase "to a degree that renders the person incapable of safely driving a vehicle" that is found in current law has not been interpreted by the courts. It is unknown what, if any, effect the deletion of that phrase will have on driving under the influence law.

According to AOC, 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.

ABS/jle