

LFC Requester:	Austin Davidson
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date 1/17/2024
Bill No: HB 62

Sponsor: Andrea Reeb
Short Title: Analyst Testimony via Video in Hearings

Agency Name and Code 218 AOC
Number: _____
Person Writing Aaron Holloman
Phone: 505-487-6140 **Email** aocash@nmcourts.gov

SECTION II: FISCAL IMPACT

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	---	---	---

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

House Bill 62 proposes to amend the Implied Consent Act, relating to DUI cases, to add a new section for the procedure for the appearance by interactive video of an analyst, who has been subpoenaed to testify in a court proceeding. In prosecuting a DUI case, these analysts provide testimony about the results of laboratory tests establishing whether a defendant was exceeding the statutory blood alcohol levels causing impairment. The Bill further proposes to amend Section 66-8-107, NMSA 1978 to expand the implied consent so that by operating a motor vehicle a person consents to the presentation of testimony of a laboratory analyst by interactive video.

FISCAL IMPLICATIONS

The New Mexico judiciary previously implemented robust audio-visual procedures and the statewide use of software applications for holding remote proceedings in response to the public health emergency. There would be no significant fiscal implications to the courts as the currently have adequate technology systems in place to allow for the testimony of a laboratory analyst by interactive video in DWI jury trials that would come before the courts if this Bill is enacted.

Given the constitutional implications of the bill (see “Significant Issues” below), the bill would likely lead to a legal challenge to resolve the confrontation clause issue, resulting in cost of litigating the matter through all appellate avenues.

SIGNIFICANT ISSUES

Allowing laboratory analysts to testify remotely through interactive video may allow for a more efficient use of their time as they will not be required to travel in person when subpoenaed for these proceedings, which presumably will also result in cost-savings for the scientific laboratory division of the Department of Health. Additionally, by easing the scheduling burden on the witnesses, it may allow for court hearings to proceed with fewer need for continuances in order to secure a convenient time for witnesses.

Under both the U.S. Constitution and the New Mexico Constitution, a defendant has a right “to confront all witnesses against him.” The New Mexico Supreme Court has held in *State v. Thomas*, 2016-NMSC-024, that this right to confront means the right to confront a live witness, and not a witness appearing by video, unless a judge finds that would further a compelling public policy interest (for example a child who is a victim of sexual assault need not testify in person). The language of the bill as drafted is open to a constitutional challenge, and could lead to litigation to determine the matter.

PERFORMANCE IMPLICATIONS

In response to the COVID-19 public health emergency, the New Mexico Supreme Court implemented Emergency Court Protocols that included procedures for allowing for the audio-visual testimony of a witness. All courts in New Mexico were required by necessity to address technological needs to make this kind of hearing possible. Currently, there are no significant technical limitations to allowing a witness, including a laboratory analyst, to testify via two-way, or interactive, video.

ADMINISTRATIVE IMPLICATIONS

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

See “Performance Implications” above.

OTHER SUBSTANTIVE ISSUES

The language “shall be deemed to have given consent” in Sec. 2, creating 66-8-107(C) is not clear whether that consent can be revoked at a later time by the defendant. This could create a need for litigation to define the limits of consent.

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL
Status Quo

AMENDMENTS