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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 1/31/2024

Bill No: SB 190

Sponsor: Daniel A. Ivey-Soto
Craig W. Brandt
Dayan Hochman-Vigil
Andrea Reeb
William "Bill" R. Rehm

Agency Name and Code Number: AOC 218

Person Writing
fsdfs _____ **Analysis:** Jason L. Clack

Short Title: DWI Act

Email
Phone: 505-629-3172 : aocjlc@nmcourts.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue	Recurring	Fund

FY24	FY25	FY26	or Nonrecurring	Affected

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: Relates to HB 152
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: Senate Bill 190 repeals Section 66-8-102 NMSA 1978, related to driving while under the influence violations, enacts new legislation for driving under the influence and boating under the influence, and amends other sections of law related to the Motor Vehicle Code.

Section 1 amends 66-1-1 NMSA 1978 by defining Chapter 66 NMSA 1978 as the “Motor Vehicle Code”.

Section 2 amends portions of Section 66-1-4.3 NMSA 1978.

- Subsection J is amended to define a “commercial motor vehicle” as “a self-propelled or towed motor vehicle used on a highway to transport passengers or property when the vehicle”:
 - has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of four thousand five hundred thirty-six kilograms, or ten thousand one pounds or more, whichever is greater;
 - is designed to transport more than fifteen passengers; or
 - is used “in transporting material found by the United States secretary of transportation to be hazardous under 49 U.S.C. Section 5103 and transported in a quantity requiring placarding under regulations prescribed by the United States secretary of transportation under 49 C.F.R. Subtitle B, Chapter 1, Subchapter C.”

Section 3 amends Section 66-1-4.11 NMSA 1978 to add a definition of "motorboat" to mean “any boat, personal watercraft or other type of vessel propelled by machinery, whether or not machinery is the principal source of propulsion. "Motorboat" includes a vessel propelled or designed to be propelled by a sail, but does not include a sailboard or a windsurf board. "Motorboat" does not include a houseboat or any other vessel that is moored on the water,

but not moving on the water.”

Section 4 amends Section 66-3-1010.3 NMSA 1978 to add references to new Sections 66-14-2 and 66-14-3 under the proposed “DWI Act”.

Section 5 amends Section 66-5-1.1 NMSA 1978 to include references to the new Sections proposed in the “DWI Act”.

Section 6 amends Section 66-5-1.2 NMSA 1978 to remove the reference to Section 66-8-102 and adds “or tribal” after the word “tribe”.

Section 7 amends Section 66-5-29 NMSA 1978 to change statutory references to reflect new Sections of the proposed “DWI Act”.

Section 8 amends Section 66-5-33.1 NMSA 1978 to remove the \$25 license reinstatement fee, to add new statutory references for the proposed “DWI Act”, to remove the \$75 reinstatement fee for revoked licenses, to remove the reference to the reinstatement fees, and to remove current paragraph E making an appropriation of the reinstatement fees.

Section 9 amends Section 66-5-35 NMSA 1978 to include references to the new Sections proposed in the “DWI Act”.

Section 10 amends Section 66-5-54 NMSA 1978 by removing Subsection D and renumbering Subsections E through U. This section also amends statutory references to reflect new Sections of the proposed “DWI Act”.

Section 11 amends Section 66-5-68 NMSA 1978 to change statutory references to reflect new Sections of the proposed “DWI Act”.

Section 12 amends Section 66-5-205.1 NMSA 1978 by removing subsections D through F.

Section 13 amends Section 66-5-206 NMSA 1978 by adding the paragraphs D through F which were struck from Section 66-5-205.1 NMSA 1978, as new paragraphs C through E.

Section 14 amends Section 66-7-2 NMSA 1978 to change statutory references to reflect new Sections of the proposed “DWI Act”.

Section 15 enacts a new Section 66-14-1 NMSA 1978 creating and defining the “DWI Act” as Sections 66-14-1 through 66-14-22 NMSA 1978.

Section 16 enacts new Section 66-14-2 NMSA 1978 to define driving under the influence of intoxicating liquor, aggravated driving under the influence of intoxicating liquor and unlawful alcohol concentrations as follows:

- A. Defines driving under the influence of intoxicating liquor as consisting of a person who is under the influence of intoxicating liquor driving a vehicle within this state.
- B. Makes it unlawful for a person to drive:
 - (1) A vehicle with a blood alcohol concentration (BAC) of .08 or more within 3 hours driving when the alcohol was consumed before driving.
 - (2) A commercial motor vehicle with a BAC of .04 or more within 3 hours of driving when the alcohol was consumed before driving.

- C. Defines aggravated driving under the influence of intoxicating liquor as:
- (1) A vehicle with a blood alcohol concentration (BAC) of .16 or more within 3 hours driving when the alcohol was consumed before driving.
 - (2) Causing bodily injury as a result of driving under the influence of intoxicating liquor
 - (3) Refusing to submit to chemical testing per the Implied Consent Act and in the judgment of the court, the person was driving under the influence of alcohol.

Section 17 enacts new Section 66-14-3 NMSA 1978 to define driving under the influence of drugs, aggravated driving under the influence of drugs as follows:

- A. Driving under the influence of intoxicating drugs consists of a person who is under the influence of a drug or a combination of a drug and alcohol to the degree that renders a person incapable of safely driving a vehicle within the state, or who is under the influence of a combination of a drug and alcohol to a degree that renders the person incapable of safely driving a vehicle within this state.
- B. Defines aggravated driving under the influence of an intoxicating drug as a person causing bodily injury as a result of unlawful operation of a vehicle while driving under the influence of an intoxicating drug.

Section 18 enacts new Section 66-14-4 NMSA 1978 which includes a new definition for “driving a vehicle” to mean, “the motorist is observed in control of a vehicle that is in motion by a named witness, either law enforcement or civilian; the motorist is observed in control of a vehicle that is in a lane of traffic on a roadway by a named witness, either law enforcement or civilian; the motorist is observed blocking other vehicles on private property in an area designated for vehicle travel by a named witness, either law enforcement or civilian; or following an investigation, a law enforcement officer ascertains that that motorist was in control of a vehicle that was involved in an accident.” It also contains a clause limiting claims against a motorist who was not driving under this new definition.

Section 19 enacts new Section 66-14-5 NMSA 1978 which defines the penalties for a first conviction for driving under the influence of intoxicating liquor or drugs and aggravated driving under the influence of intoxicating liquor or drugs.

Section 20 enacts new Section 66-14-6 NMSA 1978 which defines the penalties for a second conviction for driving under the influence of intoxicating liquor or drugs and aggravated driving under the influence of intoxicating liquor or drugs.

Section 21 enacts new Section 66-14-7 NMSA 1978 which defines the penalties for a third conviction for driving under the influence of intoxicating liquor or drugs and aggravated driving under the influence of intoxicating liquor or drugs.

Section 22 enacts new Section 66-14-8 NMSA 1978 which defines the penalties for a fourth conviction for driving under the influence of intoxicating liquor or drugs.

Section 23 enacts new Section 66-14-9 NMSA 1978 which defines the penalties for a fifth conviction for driving under the influence of intoxicating liquor or drugs.

Section 24 enacts new Section 66-14-10 NMSA 1978 which defines the penalties for a sixth conviction for driving under the influence of intoxicating liquor or drugs.

Section 25 enacts new Section 66-14-11 NMSA 1978 which defines the penalties for a seventh conviction for driving under the influence of intoxicating liquor or drugs.

Section 26 enacts new Section 66-14-12 NMSA 1978 which defines the penalties for an eighth or subsequent conviction for driving under the influence of intoxicating liquor or drugs.

(Sentencing under the above, proposed, new provisions are consistent with current sentencing provisions in Section 66-8-102 NMSA 1978)

Section 27 recompiles Section 66-8-102.5 NMSA 1978 as Section 66-14-13 NMSA 1978 and amends the section to include Driving While Intoxicated with a Teenage Minor in the Vehicle, changes all references to Section 66-8-102 NMSA 1978 to Section 66-14-2 NMSA 1978 and amends the penalties as follows:

- A. Adds the requirement for participation in a parenting class.
- B. Adds new Subsection B to define driving while intoxicated with a teenage minor in the vehicle and sets a penalty assessment of \$300 and participation in a parenting class.
- C. Renumbers prior Subsection B as Subsection C and adds a violation of new Subsection B as an additional charge to be punished as a separate offense.
- D. Renumbers prior Subsection C as Subsection D and adds a definition for teenage minor.

Section 28 recompiles Section 66-8-101.1 NMSA 1978 as Section 66-14-14 NMSA 1978 and amends the section as follows:

- A. Changes all references to “woman”, “her” or “mother” to “person” or “pregnant person”.

Section 29 recompiles Section 66-8-101 NMSA 1978 as Section 66-14-15 NMSA 1978 and changes the reference to Section 66-8-102 NMSA 1978 to Section 66-14-2 or 66-14-3 NMSA 1978.

Section 30 enacts new Section 66-14-16 NMSA 1978, Alcohol or Drug Abuse Screening Required. The new section requires an offender convicted of driving under the influence of liquor or drugs to participate in and complete an alcohol or drug abuse screening program approved by the department of finance and administration, as well as any required treatment, and prohibits the requirement to be suspended, deferred or taken under advisement.

Section 31 enacts new Section 66-14-17 NMSA 1978, requiring the corrections department to provide substance abuse counseling and treatment to an offender that is incarcerated after a felony conviction for driving under the influence of intoxicating liquor or drugs. The corrections department is also required to provide substance abuse counseling and treatment or require the offender to obtain substance abuse counseling and treatment while the offender is on probation or parole under the supervision of the corrections department.

Section 32 enacts new Section 66-14-18 NMSA 1978 provides for convictions in other jurisdictions to be deemed a conviction pursuant to this section for purposes of determining whether a conviction is a second or subsequent conviction when the law of the other jurisdiction is equivalent to New Mexico law for driving under the influence of intoxicating liquor or drugs.

Section 33 enacts new Section 66-14-19 NMSA 1978 and grants the magistrate court concurrent jurisdiction with the district court to try an offender in the case of a first through third offense pursuant to the DWI Act, when a charge is brought pursuant to Section 66-14-2 NMSA 1978 (DWI for alcohol). However, in the case of a first, second or third offense of the DWI Act, when a charge is brought pursuant to Section 66-14-3 NMSA 1978 (DWI for drugs), in any county with greater than two hundred thousand residents pursuant to the most recent federal decennial census, the magistrate court has concurrent jurisdiction with the district court to try the offender, and in all other counties, the district court has exclusive jurisdiction to try the offender.

Section 34 recompiles Section 66-8-102.1 NMSA 1978 as Section 66-14-20 NMSA 1978 and changes reference to Section 66-8-102 to Section 66-14-2 or 66-14-3.

Section 35 recompiles Section 66-8-102.2 NMSA 1978 as Section 66-14-21 and changes the reference to Subsections C and D of Section 66-8-102 to Section 66-14-2 NMSA 1978.

Section 36 recompiles Section 66-8-102.4 NMSA 1978 as Section 66-14-22 NMSA 1978 and makes the following amendments:

- A. In Subsection A, changes the motor vehicle division of the taxation and revenue department to the division and the traffic safety bureau of the department of transportation to the bureau.
- B. Changes the references to provisions of Section 66-8-102 NMSA 1978 to the DWI Act in Subsections A and B.

Section 37 enacts a new Section 66-14-31 NMSA 1978 creating and defining the “Boating While Intoxicated Act” as Sections 66-14-31 through 66-14-38 NMSA 1978.

Section 38 enacts new Section 66-14-32 NMSA 1978 to define operating a boat under the influence of intoxicating liquor, aggravated boating under the influence of intoxicating liquor and, unlawful alcohol concentrations.

Section 39 enacts new Section 66-14-33 NMSA 1978 to define boating under the influence of drugs and aggravated driving under the influence of drugs.

Section 40 enacts new Section 66-14-34 NMSA 1978 which defines the penalties for a first conviction for boating under the influence of intoxicating liquor or drugs and aggravated boating under the influence of intoxicating liquor or drugs.

Section 41 enacts new Section 66-14-35 NMSA 1978 which defines the penalties for a second and subsequent conviction for boating under the influence of intoxicating liquor or drugs and aggravated boating under the influence of intoxicating liquor or drugs.

Section 42 enacts new Section 66-14-36 NMSA 1978 which places a limitation on guilty pleas in satisfaction of new Section 66-14-33, when the results of a chemical blood alcohol test contains an alcohol concentration of eight one hundredths or more.

Section 43 enacts new Section 66-14-37 NMSA 1978 which provides that “No municipal or county ordinance prohibiting the operation of a motorboat while under the influence of intoxicating liquor or drugs shall be enacted that provides for an unlawful alcohol

concentration level that is different than the alcohol concentration levels provided in Section 66-14-33 NMSA 1978.”

Section 44 enacts new Section 66-14-38 NMSA 1978 which requires “the state parks division of the energy, minerals and natural resources department [to] develop and implement a program to advertise and further educate the boating public about the dangers of boating while under the influence of alcohol or drugs and the penalties associated with a conviction pursuant to the provisions of the Boating While Intoxicated Act.

Section 45 recompiles Section 66-8-105 NMSA 1978 as Section 66-14-41 NMSA 1978 and changes the short title for the Implied Consent Act from Sections 64-8-105 through 64-8-112 NMSA 1953 to Sections 66-14-41 through 66-14-50 NMSA 1978.

Section 46 recompiles Section 66-8-107 NMSA 1978 as Section 66-14-42 NMSA 1978 adding “motorboat” in addition to operation of a motor vehicle, and changes references to “his” to “person” or “person’s”.

Section 47 recompiles Section 66-8-108 NMSA 1978 as Section 66-14-43 NMSA 1978 and changes references to “him” to the person and reference to Section 64-8-107 NMSA 1953 to Section 66-4-42 NMSA 1978.

Section 48 recompiles Section 66-8-109 NMSA 1978 as Section 66-14-44 NMSA 1978, changes references to his or him to person or persons and makes the following amendments:

- A. Changes the reference to Section 66-8-103 NMSA 1978 to Section 66-14-45 NMSA 1978 in Subsection A.
- B. Removes the reference to “a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician of his own choosing to perform a chemical test,” and inserts in lieu thereof “an independent blood draw,” in Subsection B.
- C. Changes the reference to Section 66-8-107 NMSA 1978 to Section 66-14-42 NMSA 1978 in Subsection E.

Section 49 enacts new Section 66-14-45 NMSA 1978 to identify persons qualified to perform chemical blood tests and provides relief from civil or criminal actions for person drawing blood, or assisting with the blood draw, in the performance of a chemical blood test. This section also clarifies that police officers, or judicial or probation officers, are only allowed to make an arrest or direct the performance of a chemical blood test as part of their official duties, or as otherwise authorized by law.

Section 50 recompiles Section 66-8-110 NMSA 1978 to Section 66-14-46 NMSA 1978 to add operation of a motorboat, and changes the reference to Section 66-8-102 NMSA 1978 to Section 66-14-2 or 66-14-42 NMSA 1978.

Section 51 recompiles Section 66-8-11 NMSA 1978 as Section 66-14-47 NMSA 1978 and makes the following amendments:

- A. Changes the reference to Section 66-8-107 NMSA 1978 to Section 66-14-42 NMSA 1978, removes municipal judge in Subsection A, and adds operation of a motorboat.
- B. Adds new Subsection B which prohibits a chemical blood test to be administered, except when a magistrate or district judges issues a search warrant authorizing the

chemical blood test, after a person who consents to a breath alcohol test provides a breath sample showing less than the presumptive impaired amount of alcohol refuses a chemical blood test. This subsection also outlines the circumstances under which the search warrant may be issued.

- C. Prior Subsections B through F are renumbered as Subsections C through G and references to subsections.

Section 52 adds new Section 66-14-48 NMSA 1978 allowing for video testimony of a laboratory who has conducted an analysis of blood pursuant to the Implied Consent Act, and provides procedures for procuring such video testimony in court.

Section 53 recompiles Section 66-8-111.1 NMSA 1978 as Section 66-14-49 NMSA 1978 and makes the following amendments:

- A. Reference to Section 66-8-107 NMSA 1978 is changed to Section 66-14-42 NMSA 1978 in Subsection A.
- B. Reference to Section 66-8-112 NMSA 1978 is changed to Section 66-14-49 NMSA 1978 in Subsection B.
- C. Reference to Section 66-8-111 NMSA 1978 is changed to Section 66-14-47 NMSA 1978 in Subsection C.

Section 54 recompiles Section 66-8-112 NMSA 1978 as Section 66-14-50 NMSA 1978 and changes the reference to Section 66-8-11 NMSA 1978 to Section 66-14-47 NMSA 1978 and Section 66-8-111.1 to Section 66-14-49 NMSA 1978.

Section 55 recompiles Section 66-5-501 NMSA 1978 as Section 66-14-51 NMSA 1978 and defines the Ignition Interlock Licensing Act as Sections 66-14-51 through 66-14-56 NMSA 1978.

Section 56 recompiles Section 66-5-502 NMSA 1978 as Section 66-14-52 and makes the following amendments:

- A. Changes traffic safety bureau to bureau in Subsection B.
- B. Changes the reference to Section 66-8-111 to Section 66-14-47 NMSA 1978 Subsection D.

Section 57 enacts new Section 66-14-53 NMSA 1978 which requires an ignition interlock license and installation of an ignition interlock device after conviction of driving under the influence of intoxicating liquor or drugs and outlines the length of time the device is required to be installed. This section also provides a process for application for removal of the device for a fourth or subsequent offender and requires the offender to be given credit for the time period the ignition interlock device is in use prior to sentencing.

Section 58 recompiles Section 66-5-503 NMSA 1978 as Section 66-14-54 NMSA 1978 and changes the reference to Section 66-8-101 NMSA 1978 to Section 66-14-15 NMSA 1978. Minor amendments to clarify divisions, department and bureaus were made.

Section 59 recompiles Section 66-5-504 NMSA 1978 as Section 66-14-55 NMSA 1978.

Section 60 recompiles Section 66-8-102.3 NMSA 1978 as Section 66-14-56 NMSA 1978, changes reference to Section 66-8-102 NMSA 1978 to the "DWI Act" and makes minor amendments to clarify divisions, departments and bureaus.

Section 61 creates a temporary provision requiring a study on insurance levels regarding drivers subject to the Ignition Interlock Licensing Act.

Section 62 creates a temporary provision requiring a study on duplicate forms used for persons alleged to have driven under the influence of alcohol or drugs.

Section 63 creates a temporary provision requiring the New Mexico Compilation Commission to name Chapter 66, Article 14 NMSA 1978 “Intoxication and Impairment”.

Section 64 repeals Section 66-8-102, 66-8-103 and 66-8-104, and 66-13-1 through 66-13-13 NMSA 1978.

Section 65 makes January 1, 2025 the effective date for the provisions of this act.

FISCAL IMPLICATIONS

There will be 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.

SB190 is largely a reorganization of the NM Traffic Code, with substantive changes to jurisdiction, penalties, and definitions. The largest fiscal impact of these changes would be related to the shifting of jurisdiction for misdemeanor DWI cases from the magistrate courts to the district courts, under Section 33 of the bill. There would also be a significant fiscal impact related to updating the courts’ case management system to reflect the new statutory sections and to educate judges and court staff on where to find the new statutory sections. The AOC is not able to quantify these costs at this time.

SIGNIFICANT ISSUES

- 1) **Jurisdiction for misdemeanor DWI cases:** The most significant issue for the Judiciary is the shifting of the jurisdiction of misdemeanor DWI cases, for driving under the influence of drugs (drugged driving), from the magistrate courts to the district courts, in all counties outside of Bernalillo and Dona Ana Counties. In calendar years 2021, 2022, and 2023 there were 527, 399, and 369 drugged driving cases filed in counties outside of Bernalillo and Dona Ana, respectively. This bill would require those cases to now be filed and tried in the district courts exclusively. This does not include cases where the charges were filed in the alternative for alcohol or drugs. These numbers are only for the cases where defendants were only charged with drugged driving.
- 2) **Confusion over where to file DWI cases:** SB190 would also prevent the state from filing cases in the magistrate courts in those counties where the DWI is charged in the alternative for alcohol or drugs. In many cases, whether the defendant was under the influence of alcohol or drugs, or a combination of both is a question of fact for the jury (or judge at a bench trial) and the type of influence may not always be evident at the time of charging.
- 3) **Significant increase in district court caseload:** This bill also gives exclusive

jurisdiction to the district courts in those mixed cases. This is a significant burden shifting from the magistrates to the district courts. The district courts are not in a position to accept such a significant increase in caseloads. Furthermore, these misdemeanor DWI cases may be a lower priority to more serious criminal cases in the district courts, where there is no six-month trial rule (like in the magistrate courts) to ensure that these cases are adjudicated in a timely manner.

- 4) **Confusion over which court has jurisdiction:** SB190 may also introduce some procedural confusion, as inevitably law enforcement officers will still file these cases in the magistrate courts, and there is no procedure for transferring a case from one court to another outside of appeals and felony bind overs after a preliminary examination.
- 5) **Jurisdiction to set conditions of release:** SB190 raises a question about whether the magistrates would have jurisdiction to set conditions of release in these cases, or whether those cases would have to be dismissed by the magistrates for lack of jurisdiction and refiled in the district courts. This will result in release of some of these defendants, before they are able to be seen by the judge to have pretrial conditions of release set per constitutional requirements. The magistrate courts are accustomed to adjudicating these cases, and since this new bill does not apply any new standard of proof, which would require a more complicated analysis by the higher courts, there is no clear policy reason to shift these cases to the district courts.

PERFORMANCE IMPLICATIONS

The jurisdiction shifting, discussed above, would have negative performance implications for the district courts, as their caseloads would increase, which would also increase time to disposition in these misdemeanor DWI cases.

ADMINISTRATIVE IMPLICATIONS

The jurisdiction shifting would have an administrative impact on the district courts, as it would require reallocation of administrative resources, to deal with the increase in caseloads.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 152

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS