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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 57

SHORT TITLE: Traffic Offense Video Testimony

SPONSOR: Reeb/Terrazas

LAST ORIGINAL
UPDATE: _____ **DATE:** 2/4/26 **ANALYST:** Gygi

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DOH	No fiscal impact	(\$112.0)	(\$112.0)	(\$224)	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the District Attorneys
Department of Public Safety
Law Offices of the Public Defender
New Mexico Office of the Attorney General
Taxation and Revenue Department

Agency or Agencies That Were Asked for Analysis but did not Respond

Crime Victims Reparation Commission
Department of Health

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 57.

House Bill 57 (HB57) proposes to create a new section of the Implied Consent Act to allow a person who performs or analyzes chemical testing to appear by interactive video. The interactive video must provide the opportunity for the analyst or toxicologist to be questioned and cross-examined, to be clearly visible and audible to the judge, jury, and all parties, and to clearly see and hear the proceeding, with or without accommodation.

The bill also would amend Section 66-8-107 NMSA 1978 to provide implied consent for the toxicologist or the person who performed the chemical testing to appear via interactive video.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

In its analysis for the similar HB105 in 2025, the Department of Health (DOH) stated this bill would result in cost savings to the agency:

[The bill] seeks to significantly reduce the costs incurred by the scientific laboratory staff when traveling to provide testimony in criminal cases across New Mexico. As the state's sole public health laboratory, the Scientific Laboratory supports court systems in all 33 counties. However, travel to and from these courts imposes a substantial burden in terms of both time and expenses.

Currently, staff time spent on travel, case preparation, testimony, and waiting in court is equivalent to one full-time forensic scientist. The estimated cost for staff time alone is:

- Base salary: \$79,990 per year
- Benefits (1.40 multiplier): \$31,996
- Total personnel cost: \$111,986 per year

In addition to personnel costs, travel-related expenses further strain state resources. Each overnight trip incurs a per diem expense of \$166, adding to the overall financial burden. In addition to these costs, time spent away from conducting analysis in the lab results in slower results and backlogs of specimens.

The Administrative Office (AOC) of the courts states there would be no significant fiscal implications to the courts which currently have adequate technology systems in place to support video testimony.

However, both AOC and the Public Defender (LOPD) anticipate increased workload should constitutional challenges related to the proposed litigation increase. LOPD also suggests HB57 would make it easier to bring certain offenses to trial, which could also increase the case load.

SIGNIFICANT ISSUES

HB57 is intended to make prosecution of driving under the influence (DUI) cases quicker and more likely to result in conviction by making it easier for witnesses to testify regarding test results. According to the New Mexico Sentencing Commission:

Driving under the influence is frequently charged in the state. Since FY25 there have been 4,100 cases with Section 66-8-102, the state's DUI statute, as the lead offense. Of these, 673 (16.4 percent) are disposed cases. Of these disposed cases, 106 (15.8 percent) resulted in a conviction, 483 (71.8 percent) resulted in a dismissal, 81 (12.0 percent) were deferred, and three (0.04 percent) were acquitted. Anecdotally, dismissals are often attributed to the difficulty in getting the analyst for the chemical tests of breath and blood allowed under the Implied Consent Act to court to testify in person. Video testimony would make it easier for the analyst to appear, possibly resulting in greater conviction rates. The average per day cost to incarcerate someone in the state's prison system is

\$153.08 per day; this average includes private and public facilities.

As DOH explained in its 2025 analysis, New Mexico operates differently than other states regarding in-person testimony from toxicology analysts:

The U.S. Supreme Court Decision in *Smith vs. Arizona* is being interpreted differently by some attorneys in New Mexico compared to other states. As a result, New Mexico courts may subpoena several toxicology analysts for in-person testimony for each case, resulting in 2 to 4 analysts having to travel for the same case. If this trend continues State Laboratory Division (SLD) anticipates an increase in both total time spent traveling to/from court and time waiting to testify. In some circumstances multiple subpoenas are received at once, implicating the same analysts for in-person testimony in different parts of the state. This circumstance can lead to more serious issues like the necessity to prioritize one case over another, disrupting scheduling coordination for the courts, parties, and SLD analysts, and ultimately the individual's right to due process and the prosecution's ability to present expert testimony, which can lead to unwarranted dismissals.

According to the New Mexico Attorney General:

The state's Implied Consent Act generally provides that any person who operates a motor vehicle within the state is deemed to have consented to a breath or blood test if arrested on suspicion of driving under the influence. HB57 provides that such individuals are also deemed to have consented to allow the person who conducted the chemical test to testify at court proceedings by video appearance.

While allowing for remote video testimony may increase efficiency and reduce burden for expert witnesses, there are questions about constitutionality. Video testimony as allowed by HB57 may violate the confrontation clause of the U.S. Constitution which guarantees "the right to look your accuser in the eye and cross-examine him [sic] before the factfinder." These constitutional rights cannot be abrogated by statute. This issue was also raised by state agencies regarding essentially identical bills introduced in 2025, 2024, and 2023.

As LOPD, explains:

Under both the U.S. Constitution and the New Mexico Constitution, a defendant has a right "to confront all witnesses against him." In *State v. Thomas*, 2016-NMSC-024, the New Mexico Supreme Court has held 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.

Further, changes to the current proposed bill:

Appear mostly stylistic or intended to conform the language of the bill to recent cases recognizing that different professionals can draw and process blood under the ICA. They do not cure the constitutional deficiencies of the bill. Further, it is not clear that putting this language in the ICA and related on-site warnings would be a sufficient basis for waiver of a constitutional right normally exercised at a criminal trial.

PERFORMANCE IMPLICATIONS

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The Department of Public Safety (DPS) and the Taxation and Revenue Department (TRD) both assert that the provisions in HB57 will result in efficiencies and cost savings. As DPS states:

The ability to have experts appear in court via video will not only allow for streamlined court processes but will permit critical laboratory experts to perform their important primary functions with less burden, reduce delays associated with scheduling in-person testimony, and increase the availability of expert testimony in DWI cases.

TRD also suggests MVD may be able to notify drivers more quickly that their licenses have been revoked.

Further, AOC explains the technology is already in place:

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 person who performs or analyzes chemical testing, to testify via two-way, or interactive, video.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 58 is almost identical to House Bill 105 introduced in the 2025 Legislature, House Bill 62 from 2024, and House Bill 159 from 2023.

TECHNICAL ISSUES

DPS notes several issues:

Section 1, pages 1 - 2, states that the witness shall be able to clearly see and hear the proceeding “with or without accommodation.” This phrase is vague and may create ambiguity regarding what accommodations are permissible and who is responsible for providing them.

The bill does not address procedures for technology failures during testimony, such as loss of video or audio connection. Courts may benefit from guidance on whether testimony must be suspended, restarted, or whether the witness must appear in person if technical difficulties cannot be resolved.

The bill does not explicitly require that the witness testify under oath when appearing by video. While this may be implied by standard court procedures, explicit statutory language would remove any ambiguity.

ALTERNATIVES

Prosecutors can have analysts testify by interactive video if they demonstrate necessity other than convenience, or if the parties stipulate to that method.