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FISCAL IMPACT REPORT

ORIGINAL DATE 01/29/13

SPONSOR Rehm LAST UPDATED _____ HB 162

SHORT TITLE DWI Drug Metabolite Amounts SB _____

ANALYST Jorgensen

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$317.0 - \$634.0	\$317.0 - \$634.0	\$634.0- \$1,264.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Health (DOH)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 162 adds driving while under the influence of a controlled substance or metabolite within three hours of driving a vehicle to the list of compounds that are considered to impair driving. The bill further identifies the various substances considered controlled substances or metabolite and the concentration for each and removes the age requirement of under 21 year. The bill further requires any person convicted of driving under the influence of these substances to obtain an ignition interlock license and have installed an ignition interlock device in all motor vehicles driven by the offender. The bill also substitutes "offender" for conviction and removes the alcohol concentration and substitutes "controlled substance or metabolite and refers to the driving while intoxicated statute Section 66-8-102 NMSA 1978. The process to restore a driver's license five years after the date of the fourth conviction remains the same as it for driving under the influence of alcohol. The requirements in the bill are effective July 1, 2013.

Because driving while under the influence of drugs is already a violation of §66-8-102, this bill does not create new crimes. Instead, the bill clarifies what constitutes a *per se* violation of that law by imposing clear scientific amounts of controlled substances and/or their metabolites. This removes vagueness from existing law.

The bill does not impose new penalties. The bill does not abridge any existing rights of those charged with DWI or contesting a revocation of driving privileges. If anything, the bill would raise the bar for successful prosecution of criminal DWI offenses and sustaining revocations.

FISCAL IMPLICATIONS

The NMCD has characterized the impact of this legislation on the department as “minimal to moderate”. The fiscal impact reflected in the table above is based on a range of 10 to 20 additional inmates incarcerated in New Mexico prisons.

SIGNIFICANT ISSUES

The PDD has expressed concerns as therapeutic levels exist for some of the drugs mentioned above but the proposed levels are below the therapeutic levels. For example, the therapeutic level for amphetamine is between 30 and 100 nanograms per milliliter of blood. Someone legally taking amphetamine could be convicted under this statute. The same applies to morphine where the therapeutic level is 100 nanograms per milliliter.

OTHER SUBSTANTIVE ISSUES

The DOH has stated that because the Scientific Laboratory Division (SLD) only tests for the presence of drugs in DWI cases when blood alcohol levels are less than 0.08, the passage of HB162 would not result in any additional costs to the laboratory.

NCJ/svb