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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/25/17

**SPONSOR** Rehm **LAST UPDATED** \_\_\_\_\_ **HB** 22

**SHORT TITLE** DWI for Certain Drugs & Interlocks **SB** \_\_\_\_\_

**ANALYST** Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate Increase	Indeterminate Increase	Indeterminate Increase	Recurring	General Fund/Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB31, HB49 and HB74

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)  
 Attorney General’s Office (AGO)  
 New Mexico Corrections Department (NMCD)  
 Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

House Bill 22 proposes to amend Section 66-8-102, NMSA 1978, to prohibit driving with certain amounts of contained controlled substances or metabolites in the blood within three hours of driving a vehicle regardless whether 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.

The nine substances: 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.

**FISCAL IMPLICATIONS**

The Taxation and Revenue Department (TRD) reports that it will cost \$16.8 thousand for its information technology staff to make and implement the necessary changes to the motor vehicle system. Those changes will take approximately six weeks to complete. It also points out that if the number of citations increase, the DWI Unit may need additional staff for data entry. The average annual cost for one FTE is \$31.5 thousand.

The Public Defender Department (PPD) reports that this bill will likely have little impact on its budget. The New Mexico Corrections Department (NMCD) reports minimal to moderate increase to the inmate population and probation and parole caseloads.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) is an average of \$123 per day, or about \$44,776 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average \$9.5 million per year, or three percent, since FY14 as a result of growing prison population and inmate needs.

The cost to monitor offenders on a standard caseload is \$7.79 per offender per day. However, without an estimated average number of offenders being monitored whose offense is similar to the one in this bill, the cost to the NMCD Probation and Parole Division cannot be quantified. The LFC, in its appropriation recommendation reports that NMCD's projected deficit in FY16 was \$9.9 million.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

The Administrative Hearing Office (AHO) in its response to a similar bill in 2016 reported that the bill will have a fiscal impact because it adds an additional category of Implied Consent Act violations not previously included under that act, which could significantly increase the volume of Implied Consent Act hearings adjudicated by the Office.

The AHO used the 2013 DWI arrest statistics from DOT which showed a total of 12,642 DWI arrests. A 2013 DOH report shows that 12.2 percent of DWI offenses involve the primary use of drugs other than alcohol. Applying the DOH rate to the number of arrests in 2013, there is a possibility of 1,542 additional Implied Consent Act violations under the legislation that previously would not have been subject to the Implied Consent Act. 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. The AHO estimated that 40 percent of those arrested would request a hearing resulting in an additional 616 Implied Consent Act license revocations per year. Currently, each hearing officer adjudicates about 600 cases per year. The estimated increase to the AHO in the 2016 analysis was one FTE.

**SIGNIFICANT ISSUES**

According to the Attorney General’s Office (AGO), the removal of “It is unlawful for a person who is under the influence of any drug to drive a vehicle within the state” from Section 66-8-102(B) could lead to the interpretation that if you are driving with any drug in your system you are in violation of §66-8-102(B). This could call into question the constitutionality of §66-8-102(B) and its overall purpose and intent.

PPD in 2015 provided the following quote from the National Highway Transportation Safety Administration, “It is inadvisable to try and predict effects based on blood THC alone.”

The Department of Public Safety (DPS) points out that in order to obtain drug concentration level information a blood test is required, which could be unconstitutional without a warrant in a criminal case. It cites a recent United State Supreme Court case, *Birchfield v. North Dakota*, holding that absent a warrant, blood tests cannot legally be obtained pursuant to the Implied Consent Act unless the individual consents to the blood test without threat of criminal penalty enhancement, or it is obtained in exigent circumstances. *Birchfield* decided that there is no implied consent to blood tests to be used for criminal purposes, although consent may still be implied for civil penalties.

**PERFORMANCE IMPLICATIONS**

This bill may impact the NMCD – Probation and Parole Division measure: Average standard caseload per probation and parole officer.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB22 relates to HB31 Driver’s License for Some With Only 1 DWI, HB49 DWI Interlock Requirements and HB74 Sentencing on Felony DWIs

**OTHER SUBSTANTIVE ISSUES**

The NMCD reports that the bill could increase the public’s sense of safety and reduce crime victimization.

**POSSIBLE QUESTIONS**

Is having any drug, at any level in your system, while driving unlawful?

Is it only unlawful, when you have one of the nine (9) drugs/metabolites in your blood, at/or above the “per se” level, within three hours of driving?

Should there be Aggravated DWI for the 9 drugs/metabolites?

Would an ignition interlock license be required only on convictions stemming from liquor/alcohol, but not the additional 9 drugs/metabolites?