

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO**

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*(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}*

**Date Prepared:** 1-24-25 *Check all that apply:*  
**Bill Number:** HB 105 Original  Correction   
 Amendment  Substitute

**Sponsor:** Andrea Reeb **Agency Name and Code** AOC/218  
**Short Title:** Traffic Offense Video **Number:** \_\_\_\_\_  
Testimony **Person Writing** Dana L. Cox  
**Title:** \_\_\_\_\_ **Phone:** 505-841-9840 **Email** metrdlc@nmcourts.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

##### Synopsis:

House Bill 105 proposes to amend the Implied Consent Act to add a new section for the procedure for the appearance by interactive video of an analyst or toxicologist, who has been subpoenaed to testify in a court proceeding. The Bill further proposes to amend Section 66-8-107, NMSA 1978 to expand the implied consent that a person who operates a motor vehicle gives to include consent to the testimony of a laboratory analyst or toxicologist 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 fiscal implications to the Metropolitan Court as it currently has a Zoom™ capable video conferencing platform in all of its courtrooms, as well as adequate mobile media units (see Technical Issues below) to allow for the testimony of a laboratory analyst or toxicologist by interactive video in the DWI jury trials that would come before the Court if this Bill is enacted. Similarly, all courts in the judiciary are equipped to conduct “Remote” and “Hybrid” hearings (see Performance Implications and Technical Issues below).

#### **SIGNIFICANT ISSUES**

Allowing laboratory analysts or toxicologists to testify remotely through interactive video will 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.

#### **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 testimony of a witness by audio-visual means in certain circumstances provided that there was simultaneous audio-visual communication between the witness and the Judge and attorneys in the courtroom for direct examination, cross examination, and other necessary communications during the testimony of the witness, and further provided that the Judge, court monitor or court reporter, the litigants and their counsel who are present in the courtroom, and all jurors are able to see, hear, and observe the demeanor of the witness while testifying. Since that time, the New Mexico Supreme Court has directed all courts in the New Mexico Judiciary to adopt Remote and Hybrid Hearings Plans, subject to the approval of the Supreme Court, that provide a framework for navigating remote and hybrid proceedings. In these plans, a “Remote” proceeding “refers to judicial proceedings wherein all parties and counsel appear through video or telephone.” A “Hybrid” proceeding “refers to judicial proceedings wherein at least one party or counsel appear remotely and at least one party or counsel appear in person. There are a significant number of proceedings wherein one or more witnesses appear remotely, but all litigants and counsel are in-person. If such proceedings were considered hybrid, that would over-represent the number of judicial proceedings that are not occurring primarily in person.” An “In-Person” proceeding

“refers to all parties and counsel appearing in person at the Court. If approved in advance by the Judge presiding over the case, witnesses may appear remotely for an in-person hearing.” Currently, there is generally a presumption that all criminal traffic hearings including criminal traffic bench trials will be conducted remotely; whereas, there is also a presumption that criminal jury trials (which would include DWI trials), bench trials, and preliminary examination hearings will be held in-person unless ordered otherwise by the Presiding Judge.

#### **ADMINISTRATIVE IMPLICATIONS**

None

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None

#### **TECHNICAL ISSUES**

In the Metropolitan Court, each courtroom is equipped with a Zoom™ capable video conferencing platform that includes either an 85 inch LCD TV or a 120 inch projection system for use in “Remote” or “Hybrid” proceedings. The Metropolitan Court also has eight (8) mobile media carts (each with a PC, keyboard, mouse, 42 inch monitor, webcam, speakers, and USB WiFi stick) that can be moved as needed to any of the Metropolitan Court’s twenty-one (21) courtrooms. With all courts in the New Mexico Judiciary having adopted Remote and Hybrid Hearings Plans, all courtrooms in the judiciary have the equipment to conduct “Remote” or “Hybrid” hearings.

With this equipment, if there is a “Hybrid” proceeding with any attorneys, parties, and/or witnesses appearing remotely through audio-visual means through Zoom™ or Google Meet™, the person appearing remotely can hear the proceeding and can be heard and observed by the Judge, jury, attorneys, parties, and any other individuals present in the courtroom. There is also a language access functionality that can be utilized through Zoom™ on “Remote” or “Hybrid” proceedings to allow for any needed language interpretation, as well as in-person interpretation.

#### **OTHER SUBSTANTIVE ISSUES**

Section 1 of House Bill 105, which proposes to create a new section of the Implied Consent Act, refers to “analyst,” which is a broadly descriptive term. Conversely, Section 2 of HB 105, which proposes to amend Section 66-8-107, NMSA 1978 refers more specifically to “laboratory analyst who performed a chemical test.”

Appearance of an analyst or toxicologist by interactive video may invite challenges under the confrontation clause of the U.S. Constitution Amendment 6, unless the trial court also makes “a factual finding of necessity to further an important policy and has ensured the presence of other confrontation elements concerning the witness testimony including administration of the oath, the opportunity for cross-examination, and the allowance for observation of witness demeanor by the trier of fact.” *State v. Thomas, 2016-NMSC-024, ¶ 29.*

#### **ALTERNATIVES**

None

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS**

Possible revision to Section 1 of House Bill 105 to more specifically refer to “analyst” as “laboratory analyst who performed a chemical test” to be consistent with the reference in Section 2 of the Bill.