

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(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: 23 JAN 2025 *Check all that apply:*
Bill Number: HB 105 Original Correction
 Amendment Substitute

Sponsor: Andrea Reeb **Agency Name and Code** 790 – Department of Public Safety
Short Title: Traffic Offense Video **Number:** _____
Testimony **Person Writing** Katharina Babcock
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act: 2024 HB62 and 2023 HB159

SECTION III: NARRATIVE

BILL SUMMARY

Adds a new section to the Implied Consent Act to permit an analyst or toxicologist to testify at a court proceeding related to traffic offenses via interactive video. A defendant is deemed to have given consent to an analyst's interactive video appearance if the analyst is subpoenaed to testify about chemical testing that the analyst performed to determine if the defendant was driving a motor vehicle under the influence of intoxicating liquor or drug.

It also amends the Implied Consent Act to allow laboratory analysts and toxicologists to testify in court via interactive video in cases involving chemical testing for drug or alcohol impairment. It ensures that video testimony provides a full opportunity for questioning and cross-examination while maintaining visibility and audibility for all parties. The bill streamlines court processes by reducing logistical challenges for expert witnesses and establishes that drivers implicitly consent to this form of testimony when submitting to chemical testing.

FISCAL IMPLICATIONS

None to DPS.

SIGNIFICANT ISSUES

HB 105 aims to streamline court proceedings and address logistical challenges, such as analyst travel and courtroom scheduling delays. The bill aligns with modern judicial practices using technology to enhance efficiency. It is important to note that the New Mexico Department of Public Safety (NM DPS) Forensic Laboratory does not perform toxicology testing, specifically, the laboratory does not test liquids, such as blood, and does not test breath analysis. Instead, the NM DPS Forensic Laboratory focuses on analyzing crime scene evidence in the disciplines of DNA, firearms and toolmarks, chemistry, and latent prints. Toxicology testing is conducted by the New Mexico Department of Health (NM DOH) Scientific Laboratory Division (SLD).

This bill is identical to 2023 HB159. The published FIR for that Bill had some important constitutionality issues raised by both NMAG and LOPD due to the elimination of testimony at criminal trials where testifying witnesses are subject to the kind of face-to-face, in-court confrontation guaranteed by the constitutions of both the United States and the State of New Mexico. These are constitutional rights of defendants that cannot be modified by statute. Convenience does not constitute a valid exception to the confrontation requirement under *State v. Chung*, 2012-NMCA-049, 290 P.3d 269. See U.S. Const. Amend. 6; N.M. Const. Art. II, Sec. 14. In *State v. Thomas*, 2016-NMSC-024, ¶ 29, the New Mexico Supreme Court "adopted" the rule generally requiring face-to-face confrontation from the United States Supreme Court in *Maryland v. Craig*, 497 U.S. 836 (1990) in a case that reversed a conviction where a forensic analyst testified via video.

Although the bill would only apply to traffic offenses such as DUI prosecutions, its categorical requirement of video testimony while obviating the need for individualized findings does not satisfy *Craig*, 497 U.S. 836 (1990), even if it generally furthers an important policy. *Craig* requires case-by-case, particularized findings of both necessity and furtherance of an important public policy before face-to-face confrontation can be denied. See *State v. Smith*, 2013-NMCA-081, ¶ 5;

Thomas, 2016-NMSC-024, ¶ 30.

PERFORMANCE IMPLICATIONS

New Mexico Department of Public Safety firmly believes the ability of laboratory analysts or toxicologists to appear in court via video will not only allow for streamlined court processes but will permit critical laboratory analysts and toxicologists 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 DUI cases. All these things will potentially strengthen the enforcement of traffic safety laws. DPS support this bill and what it is trying to accomplish.

ADMINISTRATIVE IMPLICATIONS

None to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None to DPS.

TECHNICAL ISSUES

None

OTHER SUBSTANTIVE ISSUES

None to DPS.

ALTERNATIVES

None proposed by DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

This is a well-crafted proposal; however, existing constitutional protections appear to cast doubt on it being workable.

AMENDMENTS

None proposed by DPS.