

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: 21FEB25 *Check all that apply:*
Bill Number: HB567 Original Correction
 Amendment Substitute

		Agency Name and Code
Sponsor: <u>Rep. Jimmy G. Mason, Rep. Randall T. Pettigrew</u>		Number: <u>790 – Department of Public Safety</u>
Short Title: <u>DWI Saliva Testing</u>		Person Writing: <u>Matthew Broom, Deputy Chief</u>
		Phone: <u>5757601485</u> Email: <u>Matthew.broom@dps.nm.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Provides for administration of an oral fluid test, in addition to chemical tests of breath or blood, to determine the drug or alcohol content of a driver suspected of driving under the influence. If the oral fluid (or blood) of a person tested contains a controlled substance, it shall be presumed that the person is under the influence of drugs. If the oral fluid contains alcohol, statutory laws concerning alcohol concentration apply.

FISCAL IMPLICATIONS

No fiscal implications to DPS.

SIGNIFICANT ISSUES

HB 567 aims to provide an additional oral fluid test to a driver under the *Implied Consent Act* to determine if a person was driving under the influence of an intoxicating liquor or substance. The bill aligns with modern judicial practices using technology to enhance efficiency.

However, it is important to note that the New Mexico Department of Public Safety (NMDPS) Forensic Laboratory does not perform toxicology testing. 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 (NMDOH) Scientific Laboratory Division (SLD).

According to the National Conference of State Legislatures website, “currently, 24 states have statutes authorizing some form of oral fluid specimen use—other terms used include saliva and other bodily substances—in DUI cases. However, most of these states do not collect oral fluid in practice. Two states—Alabama and Indiana— have permanent or active oral fluid roadside screening programs. Michigan allows collection of oral fluid for the state’s pilot program only.” <https://www.ncsl.org/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving>.

According to the article “Evaluation of On-Site Oral Fluid Drug Screening Devices,” “[o]ral fluid has emerged as a popular alternative matrix for drug detection in criminal justice, workplace, and impaired driving populations. The detection windows for many drugs in oral fluid are similar to those in blood. The advantages of using oral fluid specimens over blood and urine are oral fluid can be collected using non-invasive sample collection techniques that eliminate the need for collection facilities or same-sex observation. They also have minimal potential for adulteration and contamination, which help to save time and resources. Furthermore, oral fluid samples can be collected proximate to the time of driving, allowing for better correlation between signs and symptoms of impairment observed at the time of arrest as compared to any drugs detected in a biological sample collected later. Limitations of oral fluid as a sample matrix include the fact that drug concentrations cannot be related to a specific degree of impairment in the driver, nor can they be used to predict blood drug concentrations, but neither can any other type of test.” In this study, researchers tested field oral fluid drug testing screening devices to assess their accuracy, reliability, performance to manufacturer specification, susceptibility to interference, and resistance of the consumables to extremes of temperature and humidity. They found that there was variability in performance across devices and variability across drugs for devices. Results in field use would still require confirmation testing.

This is an evolving area of forensics being used in the criminal arena, and with the right supporting infrastructure, it could potentially provide another avenue for proving that someone is under the influence of intoxicating liquor or drugs. However, New Mexico does not have the infrastructure necessary to support this change in the law. The *per se* statutes and case law only pertain to the use of breath and blood to prove driving while impaired by alcohol or drugs. There is no *per se* standard for oral fluid in New Mexico law, and the

Scientific Laboratory Division of the Department of Health does not have a way to test it at this time. Making these amendments to the bill provides no additional assistance at this time to getting impaired drivers off the roads in this state. However, this added language may be incredibly helpful in the future.

PERFORMANCE IMPLICATIONS

When there is an infrastructure to support it in the future, this legislation could improve testing and results efficiency by providing a test(s) of blood, breath or oral fluid, or any combination thereof, as administered at the direction by a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within New Mexico while under the influence of an intoxicating liquor or drug.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS as toxicology testing is conducted by the New Mexico Department of Health (NMDOH) Scientific Laboratory Division (SLD).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship or relationship to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.