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FISCAL IMPACT REPORT

SPONSOR Reeb LAST UPDATED _____
ORIGINAL DATE 2/6/2025
BILL
SHORT TITLE Traffic Offense Video Testimony NUMBER House Bill 105
ANALYST Dinces

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
DOH	No fiscal impact	(\$112.0)	(\$112.0)	(\$224)	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Law Offices of the Public Defender (LOPD)
New Mexico Office of the Attorney General (NMAG)
Taxation and Revenue Department (TRD)
Department of Health (DOH)
Crime Victims Reparation Commission (CVRC)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 105

House Bill 105 (HB105) adds a new section to the Implied Consent Act to allow that, if a party subpoenas an analyst or toxicologist to testify at a court proceeding for any purpose, the analyst or toxicologist may appear by interactive video. The bill also amends Section 66-8-107 NMSA 1978 to add that the defendant shall be deemed to have given consent to the analyst's or toxicologist's appearance by means of interactive video if a laboratory analyst who performed a chemical test or a toxicologist testifies as an expert on the results of the chemical testing

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Department of Health states this bill would be a cost savings to the agency:

HB105 seeks to significantly reduce the costs incurred by the scientific laboratory staff

when traveling to provide testimony in criminal cases across New Mexico. As the state's sole public health laboratory, the Scientific Laboratory supports court systems in all 33 counties. However, travel to and from these courts imposes a substantial burden in terms of both time and expenses.

Currently, staff time spent on travel, case preparation, testimony, and waiting in court is equivalent to one full-time forensic scientist. The estimated cost in staff time alone is:

- Base salary: \$79,990 per year
- Benefits (1.40 multiplier): \$31,996
- Total personnel cost: \$111,986 per year

In addition to personnel costs, travel-related expenses further strain state resources. Each overnight trip incurs a per diem expense of \$166, adding to the overall financial burden. In addition to these costs, time spent away from conducting analysis in the lab results in slower results and backlogs of specimens.

SIGNIFICANT ISSUES

DOH explains how New Mexico operates differently than other states in regard to in person testimony from toxicology analysts:

The US Supreme Court Decision in *Smith vs. Arizona* is being interpreted differently by some attorneys in New Mexico compared to other states. As a result, New Mexico courts may subpoena several toxicology analysts for in-person testimony for each case, resulting in 2-4 analysts having to travel for the same case. If this trend continues State Laboratory Division (SLD) anticipates an increase in both total time spent traveling to/from court and time waiting to testify. In some circumstances multiple subpoenas are received at once, implicating the same analysts for in-person testimony in different parts of the state. This circumstance can lead to more serious issues like the necessity to prioritize one case over another, disrupting scheduling coordination for the courts, parties, and SLD analysts, and ultimately the individual's right to due process and the prosecution's ability to present expert testimony, which can lead to unwarranted dismissals.

While allowing for remote video testimony may increase efficiency and reduce burden for expert witnesses, there are questions about constitutionality. Both of these issues are discussed by agencies below.

The Department of Public Safety (DPS) highlights:

This bill is identical to 2023 House Bill 159. The published FIR for that bill had some important constitutionality issues raised by both the New Mexico Attorney General and the Law Office of the Public Defender 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.

NMAG also brings up the constitutionality question:

This bill raises concerns under the Confrontation Clause of the United States Constitution when applied to criminal trials. 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. Under *Craig*, “[a] criminal defendant may not be denied a physical face-to-face confrontation with a witness who testifies at trial unless the court has made a factual finding of necessity to further an important public 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.” The Court in *Thomas* recognized that our Court of Appeals has consistently applied *Craig* when analyzing the admissibility of live two-way video testimony under the Confrontation Clause and that the “vast majority of courts from other jurisdictions, both state and federal, are in accord

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.

The Crime Victims Reparation Commission (CVRC) states that they would anticipate greater availability of experts as well as improve efficiency in case processing which would likely positively impact crime victims.

DPS states:

DPS 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.

Section 1 of HB105, 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 HB105, which proposes to amend Section 66-8-107, NMSA 1978 refers more specifically to “laboratory analyst who performed a chemical test.”

ADMINISTRATIVE IMPLICATIONS

NMAG states that the enactment of this proposed legislation could increase the caseloads of the district and appellate courts due to a potential increase in appeals.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is identical to House Bill 159 from 2023 and House Bill 62 from 2024

SD/hj/SL2