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FISCAL IMPACT REPORT

SPONSOR <u>Reeb</u>	LAST UPDATED <u>2/7/2025</u>
	ORIGINAL DATE <u>2/2/2025</u>
SHORT TITLE <u>DWI Blood Testing</u>	BILL NUMBER <u>House Bill 106/aHHHC</u>
	ANALYST <u>Tolman</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	At least \$28.2	At least \$33.0	At least \$33.0	At least \$94.2	Recurring	General Fund
DOH	\$318.0	\$318.0	\$318.0	\$954.0	Recurring	General Fund
DOH	\$600.0	\$0.0	\$0.0	\$600.0	Nonrecurring	General Fund
LOPD	At least \$225.1	At least \$219.9	At least \$219.9	At least \$664.9	Recurring	General Fund
Total	At least \$1,171.3	At least \$570.9	At least \$570.9	At least \$2,313.1	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 Sentencing Commission (NMSC)
 Department of Health (DOH)
 Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of HHHC amendment to House Bill 106

The House Health and Human Services Committee (HHHC) amendment to House Bill 106 (HB106) strikes Section 1 from the bill, which was existing statute Section 66-8-102 NMSA 1978, strikes “cannabis” from the list of substances for which a person who was under the influence of could elicit probable cause to obtain a search warrant for a chemical blood test by a law enforcement officer if the officer believed the person was under the influence of that substance when they caused the death or great bodily injury of another or committed a felony or

a misdemeanor, and strikes a new subsection which provided a definition of “cannabis”.

Synopsis of House Bill 106

House Bill 106 amends multiple statutes related to driving a vehicle or operating a motor boat under the influence of intoxicating liquor or. The bill proposes changes to the requirements for chemical blood testing for individuals suspected of operating a vehicle or motorboat while under the influence, authorizing search warrants for blood in circumstances where there is only probable cause to suspect that a misdemeanor has been committed, and specifies the medical professionals authorized to withdraw blood in the performance of chemical blood tests.

Section 2 amends Section 66-8-103 NMSA 1978 to replace the term “laboratory technician” with “emergency medical technician or certified phlebotomist” with respect to who shall draw the blood sample and replaces the term “blood-alcohol” with “chemical blood test.”

Section 3 amends Section 66-8-104 NMSA 1978 to clarify that officers are only allowed to make an arrest or direct the performance of chemical blood test while on official duty.

Section 4a amends Section 66-8-111(A) NMSA 1978 to allow a law enforcement officer to obtain a search warrant for a chemical blood test if there is probable cause to believe a person was under the influence of alcohol, cannabis, or a controlled substance when they caused the death or great bodily injury of another or committed a felony or a misdemeanor. If a person refuses a chemical test and did not cause great bodily injury of another, or if there was probable cause to believe a person had committed a misdemeanor while under the influence of those substances, the person’s charge may be elevated to aggravated. This section also defines “cannabis” very broadly to mean all parts of the plant, extracts from the plant, and products made from the plant, including edible or topical products.

Section 5 amends Section 66-8-111.1(A) NMSA 1978 to make applicable Section 66-8-111 NMSA 1978 as it pertains to obtaining a chemical test and serving notices.

Section 6 amends Section 66-13-1 NMSA 1978 to update section references in NMSA 1978 applicable to the “Boating While Intoxicated Act.”

Section 7 amends Section 66-13-6 NMSA 1978 to identify who is qualified to perform a chemical blood test and limits their liability in civil or criminal actions, except if negligent.

Section 8 amends Section 66-13-7 NMSA 1978 to clarify, under the Boating While Intoxicated Act, officers shall only make an arrest or obtain a chemical blood test if on official duty.

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

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The New Mexico Corrections Department (NMCD) reports that the average cost to incarcerate a single inmate in FY22 was \$56.2

thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities.

The New Mexico Sentencing Commission (NMSC) notes the effect on the state prison population by the passage of HB106 is difficult to determine, but the changes proposed by HB106 could expand the circumstances under which an officer can request a warrant for a chemical blood test for a suspected DUI and could likely result in more people being imprisoned for a driving under the influence (DUI) offense. Based on estimates of actual time served provided by NMSC, the average length of stay for individuals who commit a DUI offense is 1.17 years. Therefore, if one additional individual is imprisoned for such an offense per year due to the passage of HB106, this would cost NMCD \$28.2 thousand in FY26 and \$33 thousand in subsequent years.

The Department of Health (DOH) anticipates HB106 would likely increase the number of cases received by the Toxicology Bureau of the Scientific Laboratory. This increase in required testing would necessitate the addition of 2 new FTE capable of performing testing and testifying in court, at an annual recurring cost of \$218 thousand. DOH also anticipates new instrumentation would need to be purchased to handle a higher caseload. This new instrumentation would need to be a mass spectrometer with high-throughput capabilities to maintain industry standards for drug analysis at an anticipated one-time cost of \$600 thousand. DOH also anticipates that up to 400 man-hours would need to be spent developing and validating methodologies for the new instrumentation at an estimated annual cost of \$100 thousand.

The Law Office of the Public Defender (LOPD) notes that the bill would likely increase the number of warrants for blood draws, which could lead to more DWI cases being charged and an increase in LOPD caseload. In cases involving blood-drawn evidence, LOPD notes these cases are often settled by plea bargain. However, in cases where the person's blood is drawn unwillingly, this could invite litigation on the lawfulness and constitutionality of the search. Depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed LOPD staff and funds for counsel compensation. LOPD anticipates such cases could likely be handled by entry-level public defender attorneys, with a recurring agency cost for an associate trial attorney's mid-point salary, including benefits, of \$104,860 in Albuquerque and Santa Fe and \$113,350 in the outlying areas. Recurring statewide operational costs per attorney would be \$12,780 with start-up costs of \$5,210. Additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$102,226.

Additional increased system costs beyond incarceration, defense, and testing, such as costs to law enforcement to investigate and arrest individuals and the prosecution by the district attorneys, are not included in this analysis but could be moderate.

SIGNIFICANT ISSUES

New Mexico consistently ranks high nationally for DWI-related arrests, crashes, and deaths. In 2023, New Mexico was ranked in the top three among states nationally for DWI-related deaths. HB106 attempts to address operational challenges in DWI enforcement by increasing access to qualified personnel for blood tests and expanding the types of cases when a warrantless blood test of an individual can be compelled.

According to the Administrative Office of the Courts (AOC), the Administrative Office of the District Attorneys (AODA), the Department of Public Safety (DPS), and LOPD, officers may only request a blood test warrant currently under the law if there is probable cause to believe the person committed a felony level DWI offense. The federal court case *Birchfield v. North Dakota*, 579 U.S. 136 S. Ct. 2160 (2016), and the New Mexico court case *State v. Vargas*, 2017-NMCA-023, established that the Fourth Amendment does not permit warrantless blood tests in arrests for driving under the influence and that motorist cannot be deemed to have consented to submit to a blood test. These cases establish the constitutional requirement of a warrant before a blood test can be compelled. Under the current statutory scheme, law enforcement can only obtain a warrant for a blood draw on driving under the influence of alcohol (DUI) and driving under the influence of drug (DUID) arrests when there is probable cause the person has caused the death or great bodily injury of another person or committed a felony. Both AODA and DPS note that adding the words “or misdemeanor” in Section 4 on page 13, line 24, is referred to as “the Birchfield Fix” and allows law enforcement to obtain a search warrant where there is probable cause to believe a person is driving under the influence and refuses to submit to testing.

LOPD notes blood evidence is not always necessary for convictions in DWI cases. The Implied Consent Act requires submission to a breath test, and refusal to a breath test is often used as evidence of guilt at trial. This bill would, therefore, be most impactful on cases involving drugs, not alcohol, which cannot be detected by a breath test. The passage of this law would most often be applied in cases where an individual provides a breath test that is negative for alcohol, but the officer wants to test for drugs. LOPD notes other evidence can be presented at trial, including observations of bad driving, officer descriptions or videos of a defendant’s behavior during the investigation and arrest process, an officer’s lapel camera video, drug recognition evidence from an officer specifically trained to recognize impairment by common drugs, or a defendant’s refusal of testing can be used as evidence of consciousness of guilt, each of which can be successful for conviction in a jury trial in such cases.

LOPD also notes blood evidence can be burdensome to present at trial. In cases involving a blood draw, this takes at least one officer off of the street, often for hours, in order to get the blood draw at a hospital in the first place. Testing blood by an authorized laboratory can inundate labs with crime-related testing, where felonies such as sexual assaults and homicides should be prioritized. Admitting blood test results in court in a DUI case requires expert testimony from the scientific laboratory analyst during pretrial interviews and at trial. DUI cases often require additional expert witnesses by both the prosecution and defense.

Both AOC and LOPD noted the ruling in the New Mexico case *State v. Adams* established that the Implied Consent Act in its present form already allows the admission at trial of blood evidence collected by “emergency department technicians.” The expanded statutory language of HB106 is, therefore, unnecessary but would codify the *Adams* holding. LOPD notes the question about the collection by a contractor phlebotomist is currently pending in the Court of Appeals in *State v. Bailey*, but AOC notes that “certified phlebotomist” is consistent with current case law and regulation.

DOH notes HB106 would expand the language of “alcohol or a controlled substance” to include “cannabis,” but this could be redundant because cannabis is still considered a scheduled substance according to the U.S. Drug Enforcement Administration. DOH notes changing the language to “alcohol or a potentially impairing substance” would remove the specificities of

requiring a scheduled substance. The HHHC amendment to HB106 addresses DOH’s concern by removing the word “cannabis”.

DOH also points out HB106 adds a definition for cannabis as it applies to cases involving driving while under the influence. However, the definition for cannabis provided in HB106 could result in increased difficulty in testing and testimony for Scientific Laboratory staff because they test for metabolites and synthetic derivatives of tetrahydrocannabinol (THC) which are not included in the proposed definition. DOH notes these metabolites and synthetic cannabinoids may be equally impairing or more impairing than THC. The HHHC amendment to HB106 attempts to address DOH’s concern by dropping the definition of “cannabis”.

PERFORMANCE IMPLICATIONS

AOC notes HB106 could impact performance-based budgeting by the agency if the bill has an impact on cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

DPS notes it and other law enforcement agencies would likely need to update training materials, procedures, and inter-agency coordination to integrate newly authorized medical professionals into the process if HB106 were enacted. Furthermore, law enforcement officers would likely need to be briefed to ensure understanding of the officers’ expanded roles and responsibilities.

TECHNICAL ISSUES

DPS notes Section 4, page 14, line 13, of the bill refers to “cannabis or drugs” and in most other places the bill refers to “cannabis or a controlled substance.” Under federal laws, cannabis is still a controlled substance, but cannabis is no longer considered a controlled substance under New Mexico law. DPS suggests cannabis could be separated out from controlled substances or using the term “drugs.” Otherwise, this could result in potential issues in enforcement of NMSA Section 66-8-111(B). The HHHC amendment to HB106 attempts to address DPS’s concern by dropping “cannabis”.

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