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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/13

SPONSOR Pacheco LAST UPDATED _____ HB 362

SHORT TITLE DWI Chemical Test Search Warrants SB _____

ANALYST Crespin-Trujillo

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 New Mexico Department of Transportation (DOT)
 Department of Public Safety (DPS)
 New Mexico Sentencing Commission
 Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 362 (HB 362) amends Section 66-8-111 NMSA 1978 to allow a law enforcement officer to request a municipal, magistrate, or district judge to issue a search warrant for chemical blood testing when there is probable cause to believe the person has driven a motor vehicle while under the influence of alcohol or a controlled substance. Under the current law, if a suspect in a misdemeanor DWI case refuses a blood test, law enforcement officials cannot request a search warrant from the court. Current law only allows search warrants for blood testing when there is probable cause for a death or great bodily injury by DWI or when a person has committed a felony while under the influence of drugs or alcohol. The change proposed by HB 362 will allow law enforcement to obtain a search warrant for blood testing from a judge in misdemeanor DWI cases based on an officer’s written affidavit that there is probable cause to issue a search warrant authorizing chemical testing.

FISCAL IMPLICATIONS

The Administrative Office of the District Attorneys (AODA) states the change in law could result in a significant fiscal impact on the District Attorneys' offices due to the possible increase in DWI cases. Additionally, there will likely be more search warrants being executed on suspected DWI drivers and may result in more persons being prosecuted for DWI with expert testimony being needed from those analysts. The Administrative Office of the Courts (AOC) states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The Attorney General's Office (AGO) reports that there were 3,167 statewide refusal cases in 2011. If all law enforcement officers obtained search warrants for this number of additional cases each year, the Scientific Laboratory Division would need to hire more analysts to perform the blood test analyses and the cost for law enforcement agencies to get the blood processed at either the hospital labs, state labs, or private labs would increase. The New Mexico Department of Transportation (DOT) states that Blood Alcohol Content testing and reporting is used by the federal government to determine funding needs for states.

SIGNIFICANT ISSUES

The AODA reports HB 362 could serve an important function if passed into law. If there is only limited evidence that someone was under the influence of alcohol or drugs and officer observations indicate that person was probably driving impaired and they refuse an officer's request for a standardized test, such as a breath alcohol test, then the evidence obtained by a chemical test could be very important in proving the case beyond a reasonable doubt or in vindicating the suspect. It could also be especially helpful in identifying problem drivers that can have their driving privileges suspended for more than the minimal administrative sanctions and would be subject to controls like an ignition interlock device and other supervision available if someone is convicted of a criminal violation. It might also help victims have a better chance at obtaining full restitution if their worst loss was just property or a personal injury that was not as serious as death or great bodily injury.

The AODA states that current state law permits only a physician, licensed professional or practical nurse or laboratory technician or technologist employed by a hospital or physician to withdraw blood from any person in the performance testing blood for its alcohol or drug content. To satisfy this requirement and incorporate the changes proposed by HB 362, law enforcement agencies will need to have qualified persons immediately available to draw the blood. Procurement of the search warrants and execution could be problematic. There is now a rule in place that permits warrant applications to be submitted electronically to a district judge for review, and remote appearances and affirmation that procedures are followed, and even remote approval noted electronically. If a reviewing judge is not easily accessible, then the time to prepare a warrant application, and travel to the judge for their review and approval, and then obtain a blood sample could be quite extended, especially in some rural areas. If the time exceeds three hours the test results would not be presumptive for their alcohol level although the trier of fact can determine what weight to give the test result.

The New Mexico Sentencing Commission reports the National Highway Traffic Safety Administration (NHTSA) recommends expanding search warrant authorization to decrease the number of alleged DWI offenders who refuse chemical tests. In 2005, the NHTSA reported that 18 percent of the alleged DUI offenders in New Mexico refused testing.

PERFORMANCE IMPLICATIONS

The AOC reports the changes proposed by HB 362 may have an impact on the performance measures of the districts courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

The DOT has a safety goal to reduce motor vehicle related DWI crashes, injuries and deaths which could be impacted by HB 362 because law enforcement would no longer be limited to obtaining a search warrant only in cases of death, great bodily harm or felony. Law enforcement may be able to obtain more evidence of drunk drivers on New Mexico roads and help remove more drunk drivers from New Mexico's roads making them safer. The DOT also considers that successful Blood Alcohol Content testing and reporting involves several components that are simple to identify, but often difficult to achieve: high testing rates, accurate and complete reporting, and careful management.

ADMINISTRATIVE IMPLICATIONS

The AGO reports that if more search warrants are requested on all DWI cases, including misdemeanor cases, the courts would become busier and court dockets caseload would increase. Judges would need to accommodate graveyard officers' schedules even more to approve more nighttime warrants as most DWI offenses occur at night. Additionally, all prosecutors would have to be trained involving the new law, all law enforcement agencies would have to revise their policies and procedures, and law enforcement academies would need to revise their training agendas in order to train new recruits. The AOC reports that new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

TECHNICAL ISSUES

The AGO reports that there may be some equal protection and due process issues raised by HB 362 if a search warrant is not requested and issued on all misdemeanor DWI cases. Law enforcement officers could be subject to more scrutiny during cross examination if blood search warrants are not obtained in all refusal cases. It is not clear how officers would distinguish one misdemeanor case from another in terms of priority.

The AOC raises a number of issues with the amendment of the current law proposed by HB 362 which may be litigated or in need of clarification. The concerns are based upon how a refusal to get a blood test will be treated if there is the ability to get a blood test by search warrant and the confusion in charging that could be increased. Additionally, it should be considered how the change in law could affect the Implied Consent Act which currently requires a driver's license revocation if a driver refuses a breath or blood test.

The bill states that a municipal, magistrate or district judge can approve a search warrant for chemical testing; however, the municipal court rules state that the court may issue a warrant to search for property obtained or possessed in violation of a municipal ordinance, property designed or intended for use to violate a municipal ordinance, or property that would be material evidence in prosecution for violation of municipal ordinance. If a municipal ordinance against driving while under the influence of liquor or drugs does not exist, any warrant approved by a municipal judge would be subject to challenge.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO states the current law sets appropriate priorities on felony DWI cases and the requirement for search warrants in refusal cases. The DOT states that if HB 362 is not enacted, a significant number of persons driving under the influence of drugs and alcohol may continue to refuse to be subject to chemical testing.

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