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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/14

SPONSOR Rehm **LAST UPDATED** _____ **HB** 191

SHORT TITLE DWI Drug Metabolite Amounts **SB** _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 190

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 New Mexico Corrections Department (NMCD)
 Department of Health (DOH)
 Attorney General’s Office (AGO)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 191 would modify New Mexico’s DWI Laws by adopting uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver’s blood or breath, and define what those concentrations are; by restricting the requirement for automotive ignition interlock to persons convicted of driving while under the influence of intoxicating liquor or alcohol (persons convicted of driving while under the influence of any drug would no longer be subject to the ignition interlock requirement); and, by making minor grammatical corrections, and changing gender references to gender neutral.

FISCAL IMPLICATIONS

The New Mexico Corrections Department estimates that there is likely to be a minimal to moderate number of additional DWI convictions resulting from this bill, which would increase

the Department's costs by causing minimal to moderate increases to the inmate population and probation/parole caseloads.

The average cost to incarcerate a male inmate is \$38,537 per year in a state-owned and operated prison. The cost per offender in Probation and Parole for a standard supervision program is \$2,678 per year. The cost per offender in Intensive Supervision programs is \$7,206 per year. The cost per offender in the Community Corrections Program is \$1,539 per year. The cost per offender per year for female residential Community Corrections programs is \$30,135 and for males is \$22,197, although these programs usually last only six months for an offender.

This would result in some cost savings to the DOH Scientific Laboratory Division (SLD) in the areas of travel and overtime by reducing the demand for the toxicologist to travel to courts all across the state to provide interpretive testimony in drug-related DWI cases.

SIGNIFICANT ISSUES

The SLD tests for drugs in all Implied Consent cases in which the blood alcohol level is less than 0.08. In 2011, 79 percent of the blood specimens tested for drugs by DOH SLD in DWI cases were positive for drugs other than alcohol. In addition, in approximately 8 percent of these cases, there was no alcohol present in the blood.

DOH provided the following analysis:

Under current law, when a driver is suspected of being impaired due to drugs other than alcohol anywhere in the state, blood samples are sent to the State Laboratory Division (SLD) for testing. If drugs are found, the laboratory must send a toxicologist to testify in court as an expert witness to interpret the causal relationship between each drug detected in the defendant's blood to the observed impaired behavior witnessed by the arresting law enforcement officer. As a result of recent rulings by the Supreme Court of the U.S. (*Melendez-Diaz vs. MA* and *Bullcoming vs NM*), the specific analysts who performed the drug tests must testify. Because drug-related DWI cases commonly involve several drugs, it is not uncommon for the SLD to be required to send 2-4 analysts plus an interpretive toxicology expert to testify in a single DWI case involving drugs.

Unlike alcohol impairment, however, it is impossible to predict impairment solely from the concentration of drug in the body so, under current law, the testimony of the toxicologist is required to testify that the presence of the drug found in the defendant's blood indicates consumption of the drug, and also that the drugs found can produce the impairment observed by the law enforcement officer at the time of the driver's arrest.

This bill would change the prosecution of the impaired driving case. Following the establishment of probable cause by the demonstration of impairment of the driver and arrest by a law enforcement officer, the documentation of the presence of certain specified levels of any of the six drugs or their biologically impairing conversion products - would be sufficient for conviction. This would place the emphasis of the prosecution back on the observation of impairment in the driver and restoring the role of the drug test to merely confirming the presence in the blood of an impairing substance capable of explaining the observed impairment.

In contrast to alcohol, for which blood alcohol levels do correlate with and predict degree

of impairment, blood concentrations of the drugs specified in HB191 do not, by themselves, predict impairment. These specified drugs merely document the presence of impairing substances in the body; the proof of impairment is in the person's observed behavior, documented by the arresting officer.

The AGO provided the following analysis:

In addition to the presumptive .08 BAC level, current state law also prohibits driving a vehicle while under the influence of intoxicating liquor to the "slightest degree." However, it is illegal to drive a vehicle while under the influence of any drug only if the person is impaired to a degree that renders the person incapable of safely driving a vehicle (this is higher than the "slightest degree" standard for alcohol). If enacted, the bill would seem to modify the standard for drug impairment to the "slightest degree" standard as well.

OTHER SUBSTANTIVE ISSUES

For uniform application of the "uniform reference to unlawful alcohol, controlled substance, and controlled substance metabolite concentrations in the driver's blood or breath", the following New Mexico statutes may also need to be amended:

- Section 66-5-68 NMSA 1978 concerning disqualification to hold a commercial driver's license
- Section 66-8-102.1 NMSA 1978 concerning DWI guilty pleas
- Section 66-13-3 NMSA 1978 concerning operating a motorboat while under the influence of intoxicating liquor or drugs
- Section 66-13-4 NMSA 1978 concerning boating while intoxicated guilty pleas
- Section 66-13-11 NMSA 1978 concerning boating while intoxicated chemical tests

EC/ds