F I S C A L I M P A C T R E P O R T

SPONSOR Rehm **ORIGINAL DATE** 1/27/2015 **LAST UPDATED** **HB** 120/aHJC

SHORT TITLE DWI for Certain Drugs and Interlocks **SB**

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		TBD		TBD		

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Administrative Office of the Courts (AOC)
Public Defender Department (PDD)
Department of Health (DOH)
Department of Public Safety (DPS)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 120 increases the blood metabolite concentration for marijuana from two nanograms per liter of blood to five nanograms, for driving under the influence.

Synopsis of Bill

House Bill 120 would specify the amounts for nine common controlled substances or their metabolites, that if found within a person's blood, within three hours of driving would constitute per se violations of driving while intoxicated ("DWI") statute,. The nine substances are: amphetamine; cocaine; cocaine metabolite, cocaethylene; heroin; heroin metabolite, morphine; heroin metabolite, 6-monoacetylmorphine; the active ingredient in marijuana, delta-9-tetrahydrocannabinol; methamphetamine; and, 3, 4-methylenedioxymethamphetamine. Currently the DWI law has no specific standards regarding drugs and only states, "It is unlawful for a person who is under the influence of any drug to a degree that renders the persons incapable of safely driving a vehicle to drive a vehicle within this state. See, Sec. 66-8-102(B), NMSA 1978.

The bill would also revise the statutes regarding license revocations and ignition interlock requirements to include the new per se limits regarding driving while under the influence of drugs, as well as including them in the statutes on admission of DWI test results and filing DWI charges.

HB 120 would also revise the ignition interlock requirements so that the interlock requirements would only apply to persons who were convicted of DWI while impaired by alcohol. It would also change the language permitting application for relief from the interlock requirements to specify the petition could not be filed until five years had elapsed from any fourth or subsequent DWI conviction, to address those persons who have more than four DWI convictions.

HB 120 would remove the minimum alcohol concentration levels of .08 and .04 for anyone driving a commercial motor vehicle, that now are the threshold requiring law enforcement officers to charge DWI. Instead any alcohol concentration found in a blood or breath test under the implied consent law would compel them to file a DWI charge.

It would also make certain grammatical corrections and gender references in the relevant statutes.

FISCAL IMPLICATIONS

AODA stated that the bill "could result in more persons being charged with DWI since the standard used to determine if someone was under the influence of drugs, at least the most common drugs, will be clearer. However, it might result in less expert testimony required in drug cases to explain whether the level of the drug detected rendered the driver "incapable of safely driving a vehicle."

DPS stated that "Initially, more individuals would be arrested and prosecuted for driving under the influence as there will be per se amounts now found in New Mexico law for the listed substances. Other fiscal implications will include increase in officer time for court appearances and increase within the criminal justice system including trial and incarceration of those accused."

DOH stated that "Fewer scientists would have to appear in court to provide expert witness testimony to assess impairment, reducing the number of court cases throughout the state for which the laboratory would have to send expert witnesses to testify in the prosecution of impaired driving due to drugs. Subpoenas received by the SLD regarding prosecution of DWI have increased more than 100% in the past 3 years, to approximately 1,600 subpoenas. This strains laboratory resources and interferes with analytical work performed by the SLD for both DWI testing and cause of death testing performed for the Office of the Medical Investigator."

SIGNIFICANT ISSUES

AODA provided the following:

> The bill would provide a clear standard for at least nine of the most common drugs that would be a per se violation of the DWI statute, similar to the per se alcohol limits of .08, and .04 for commercial motor vehicles. Having a clear standard should reduce the need

for expert testimony and argument that is frequently required to interpret the relationship between the drugs found in a person's blood and their behavior that a law enforcement officer believed made them incapable of safely driving a motor vehicle.

The minimum threshold specified for the active ingredient in marijuana, delta-9-tetrohydrocannabinol ("THC"), is five nanograms per milliliter of blood. By comparison, Colorado and Oregon (which have legalized possession and use of marijuana by statewide referendum) set the minimum threshold of THC as the basis of a DWI charge at five nanograms per milliliter.

HB 120 would remove the current standards of .08, and .04 for persons driving commercial motor vehicles, from the statutes regarding driver's license revocation proceedings and mandatory DWI charges. It appears that the proposed changes are meant to include those persons who are impaired to the slightest degree by alcohol but fall below the per se alcohol limits.

The following was provided by DOH:

The Scientific Laboratory Division (SLD) of the New Mexico Department of Health (DOH) tests for drugs in all Implied Consent cases in which the blood alcohol level is less than 0.08. In 2013, approximately 90% of the blood specimens tested for drugs by the SLD in DWI cases were positive for drugs other than alcohol.

Under current law, when a driver is suspected of being impaired due to drugs other than alcohol, blood samples are sent to the 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. Unlike alcohol impairment, however, it is impossible to predict impairment solely from the concentration of drugs in the body. Because of this, 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 drug(s) found can produce the impairment observed by the law enforcement officer at the time of the driver's arrest.

HB120 would change the prosecution of impaired driving cases returning the emphasis of prosecution on the impaired behavior of the driver as observed by the law enforcement officer. The role of the drug test result would be to confirm the presence in the blood of an impairing substance capable of explaining the observed impairment in the driver.

PDD stated that "Setting low values for certain drugs may lead to litigation as to whether the tests penalize people for being addicts, rather than for impaired driving. For example, the bill sets the THC per se limit at 2 nanograms per milliliter of blood. According to literature, "In one study of chronic users, residual THC was detected for 24 to 48 hours or longer at levels of 0.5 – 3.2 nanograms per milliliter in whole blood." [G.Skopp and L. Potsch, "Cannabinoid concentrations in spot serum samples 24-48 hours after discontinuation of cannabis smoking," Journal of Analytical Toxicology 32: 160-4 (2008)] The National Highway Transportation Safety Administration states that "It is inadvisable to try and predict effects based on blood THC concentrations alone."

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