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FISCAL IMPACT REPORT

SPONSOR Pacheco ORIGINAL DATE 02/13/15
LAST UPDATED _____ HB 303

SHORT TITLE DWI Chemical Test Search Warrants SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$ 4.0	NFI	\$ 4.0	Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Office of the Attorney General (AGO)
NM Corrections Department (NMCD)
Department of Public Safety (DPS)
Department of Transportation (DOT)
Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 303 amends Section 66-8-111A NMSA 1978 to allow the issuance of a search warrant for a chemical test so long as there is probable cause to believe that the person to be tested operated a motor vehicle while under the influence of alcohol or a controlled substance.

The bill strikes the requirement that a warrant may only be obtained for chemical testing when there is probable cause to believe that the person to be tested has driven a motor vehicle while under the influence of alcohol or a controlled substance thereby causing the death or great bodily injury of another person, or where there is probable cause to believe that the person has committed a felony while under the influence of alcohol or a controlled substance and that chemical test will produce material evidence in a felony prosecution.

The bill further requires a person who refuses a chemical test to pay the cost of chemical testing required by a search warrant.

FISCAL IMPLICATIONS

HB 303 carries no appropriation and has minimal fiscal impact on TRD's Information Technology Division.

Listed below are the required changes and estimated time frames for the software changes required by the bill:

Develop a new fee to be posted and collected when a chemical test was refused.

- Estimated Tapestry Development Hours: 40
- Estimated Tapestry Testing Hours: 40
- 80 hours x \$50 per hour = \$4,000

This only applies if the additional fee noted is to be collected by MVD. The bill is not clear as to the entity responsible for collecting these fees.

SIGNIFICANT ISSUES

Currently, law enforcement officers in New Mexico may obtain a chemical test search warrant only in cases where there is death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony. The standard for law enforcement officers in New Mexico to request a BAC test from a driver is that the officer has probable cause, or reasonable grounds, to believe that the driver was operating a motor vehicle in violation of the State's impaired driving law. However, in New Mexico, a person may refuse a BAC test (though he or she will be charged with "aggravated DWI").

NM DOT analysis states:

Some states have adopted a "no refusal" program, which utilizes police, prosecutors, judges, and medical professionals to obtain search warrants for blood samples from suspected drunk drivers who refuse breath tests.

HB 303 would avoid these steps and leave the discretion up to law enforcement based solely on probable cause. In New Mexico, this approach may reduce the number of refusals significantly.

AGO analysis states:

This bill would allow chemical testing or a warrant to draw blood in cases where probable cause regarding a misdemeanor DWI offense exists, where the law currently requires probable cause that a felony offense exists. Additionally, the bill requires a person who refuses testing and is then subject to a chemical test after issuance of a warrant to pay the cost of chemical testing required by a search warrant.

It is unclear whether the cost of testing is triggered by a per-se level of alcohol or controlled substance indicated by the test or whether an individual who tests negative for alcohol or controlled substances would still be required to pay the cost of chemical testing. It is also unclear within the bill whether law enforcement, which would apparently pay initial costs of chemical testing pursuant to a warrant would be

reimbursed based on the language of the bill, and at what point in a criminal proceeding or license revocation proceeding an individual subject to the new language of the bill would be mandated to pay for the chemical testing.

AOC analysis states:

The ability to obtain a search warrant in misdemeanor DWI cases may increase the strength and potential for conviction in cases where the person refuses to submit to a breath test. In addition, by knowing the exact level of intoxication and/or the substance that is responsible for the intoxication gives the court more information with which to fashion the appropriate conditions of release, probation and treatment options. Such search warrants might, however, obviate the application of criminal and civil consequences from refusing to be tested.

However, TRD analysis points out that:

The requirement that the person pay for the costs of the test could be considered punitive in nature.

Also, there is no requirement that an officer warn the person of the cost in an effort to have the person comply with the officer's request to submit to the chemical test.

The bill remains silent on which entity is responsible for collection of the fee for the chemical test. Presumably the test would be performed by the Scientific Laboratory Division. Will SLD bill the person directly, or TRD as anticipated by that agency's analysis, or law enforcement or the courts?

PERFORMANCE IMPLICATIONS

Because this bill allows law enforcement to obtain a warrant for chemical testing any time there is probable cause to believe that a person has driven a motor vehicle under the influence of alcohol, practical concerns regarding execution may arise. Law enforcement may need to hire additional officers to obtain judicial approval for drafting and execution of warrants for chemical testing during evening and night-time hours and have access to or staffing of a phlebotomist during evening and night-time hours as well.

ADMINISTRATIVE IMPLICATIONS

If TRD's Motor Vehicle Department (MVD) is to collect the chemical testing fees, implementation of this bill will have a minimal impact on the ITD, as noted earlier. MVD's Tapestry system re-engineering project, scheduled to go live at the end of May, will require some additional programming to make the changes required. It may not be possible to have the changes in place by the July 1, 2015 effective date.

OTHER SUBSTANTIVE ISSUES

The National Highway Traffic Safety Administration ("NHTSA") and the Governors Highway Safety Association ("GHSA") urges states to: 1) enact tougher penalties for drunk driving offenders who refuse to take BAC tests, and 2) make test refusal admissible in court. The intent

is to discourage test refusal and to close a significant loophole in state DUI laws. The GHSA supports prompt administrative license suspension or revocation for persons arrested for DUI, refusing to take sobriety tests or failing such tests. GHSA urges all states to enact such provisions to reduce the instances of impaired driving, including allowing law enforcement to acquire a chemical test promptly to determine if the driver is under the influence.

CAC/bb