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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/28/19  
**LAST UPDATED** 2/06/19

**SPONSOR** Thomson **HB** 136/aHTPWC  
**SHORT TITLE** Nontraditional or Disability Driver Registry **SB** \_\_\_\_\_  
**ANALYST** Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate		Recurring	See Fiscal Implications

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Attorney General (NMAG)  
 Commission for Deaf & Hard-of-Hearing Persons (CDHH)  
 Developmental Disabilities Planning Council (DDPC)  
 Department of Public Safety (DPS)  
 Taxation and Revenue Department (TRD)

#### Responses Not Received From

Governor’s Commission on Disability (GCD)

### SUMMARY

#### Synopsis of HTPWC Amendment

The House Transportation, Public Works & Capital Improvements Committee changes the effective date of the bill to January 1, 2020.

#### Synopsis of Original Bill

House Bill 136 adds a new section to the Motor Vehicle Code requiring TRD to “create and maintain a statewide registry referred to as the ‘nontraditional communication or disability registry’ to identify motor vehicles that may be driven or occupied by a person who has been diagnosed by a licensed health practitioner with a condition or disability that may cause the person to fail to be able to communicate with a law enforcement officer or to respond appropriately to a law enforcement officer’s commands.” Conditions and disabilities contemplated by the bill include “autism spectrum disorder, deafness, a brain injury, an intellectual disability or seizure disorder.”

HB 136 provides that participation in the registry is optional. A person may add a vehicle to the registry when the person applies for the registration of the vehicle and certificate of title. The bill requires an applicant to submit “evidence satisfactory to the [motor vehicle] division” that the vehicle will regularly be driven or occupied by a person diagnosed by a licensed health practitioner with a condition or disability that may affect that person’s ability to interact with a law enforcement officer. The registry would be available online to members of law enforcement agencies that enforce traffic laws, but otherwise would not be publicly available. HB 136 exempts the registry from the Inspection of Public Records Act, NMSA 1978, ch. 14, art. 12.

HB 136 adds a new section to NMSA 1978, ch. 29, art. 1, which requires law enforcement officers to consult the registry prior to interacting with a person in a motor vehicle, if practicable. If the motor vehicle is on the registry, the law enforcement officer must “take appropriate precaution” during the interaction. If the registry reveals that a driver or occupant of the vehicle has a seizure disorder or photosensitive epilepsy, the officer must minimize the use of flashing lights to the extent possible, taking safety into consideration.

HB 136 has an effective date of July 1, 2019.

## **FISCAL IMPLICATIONS**

CDHH states that consideration needs to be given to the cost of developing, implementing and maintaining a registry on a statewide basis, as well as who will be fiscally responsible. Another consideration, according to CDHH, is training for law enforcement on procedural actions when interacting with an individual who is on the registry. This would require experts in fields related to the conditions and disabilities of individuals who participate in the registry. CDHH suggests that consideration might be given to working with already established agencies to reduce the cost of developing new training tools. CDHH also states that consideration may need to be given to the potential cost of notifying and training the community.

TRD estimates an approximate operating impact of \$60,000 per year to the Motor Vehicle Division of TRD (MVD) to implement, support, and maintain the registry described in HB 136. TRD states that implementation of the bill also will have a moderate impact on the Information Technology Division. Total time to complete, test and implement changes is approximately 960 hours or 6 months or \$285,950 (soft cost of \$67,200 for internal resources and hard costs of \$218,750 for contractual resources). There will be an additional annual recurring effort of approximately 100 hours or \$7,000 (soft cost for internal resources) for ongoing management of this registry.

TRD further notes that:

- MVD systems currently do not capture autism, brain injury, and intellectual disability. Implementation of this bill will require changing the medical report to capture these conditions.

- Implementation of the bill requires asking additional questions on the registration and titling of the vehicle regarding medical information, and adding new database fields/tables to create the registry.

- Work will also need to be done by our interface vendor New Mexico Interactive for communication with law enforcement agencies.

## SIGNIFICANT ISSUES

According to DDPC, the safety of drivers that either communicate in nontraditional ways or have disabilities that affect their reactions when they are stopped by police have been a concern within the disability community for the past few years. Incidents where communication between police and these individuals was either unclear or confusing have led to drivers being placed at risk. DDPC states that HB 136 would provide a way for officers to know if a driver could potentially face communication or behavioral difficulties during a police stop. It would also let the police adapt their communication and operations during traffic stops to accommodate a range of people with diverse disabilities. In doing this, the probability of incidents where police are unable to communicate with a driver and ascertain whether the driver poses a threat can be significantly decreased.

DDPC states that some individuals may not opt in to the registry because they are reluctant to disclose that they have a disability or condition. According to DDPS, while some individuals with disabilities might be concerned about the police knowing whether they have a disability, there are far more individuals with disabilities who do not share this fear. And DDPC notes that the bill exempts the registry from the public, which should assuage any privacy concerns that might arise regarding the registry.

DDPC notes that there will need to be training for police officers on various disabilities and communication methods in order to make the registry effective. Also, workers completing driver registrations will need basic training to identify legitimate documentation from a licensed health practitioner in order to ensure the validity of any documented conditions or documents.

CDHH states that because HB 136 requires individuals to opt-in to the registry, law enforcement officers may interact with a person who qualifies for the registry but is not listed. The person may not register due to privacy concerns or because when they purchased a new vehicle they were not directly responsible for registration.

CDHH notes that privacy issues may arise if an agency uses fleet or multipurpose vehicles to transport individuals with nontraditional communication/disabilities. HB 136 provides no clear process for how a transport agency would include occupants/drivers on the registry. This may create difficulties in both privacy and application of the registry.

According to CDHH, medical documents for hearing loss, such as audiograms, are not always done by a licensed health care practitioner. They are sometimes done by hearing aid dispensers. These individuals are licensed but not considered health care practitioners, which means they would not be able to provide diagnoses required by HB 136 for persons who wish to participate in the registry.

CDHH states that HB 136 improves the likelihood of recognition of a disability, but does not clarify who will advise/train law enforcement officers on the best practices for the communication barriers. According to CDHH, many state agencies are available to communicate and work with law enforcement but have not been contacted. The agencies that focus on nontraditional communication barriers may already have best practices guidelines which will expedite the training process.

CDHH notes that if the registry is reviewed during the process of a traffic stop, the stop may take longer for the law enforcement officer as well as the driver/occupant. CDHH is concerned that the officer may not check the registry due to length of time necessary to pull up the information.

NMAG notes that HB 136 requires a law enforcement officer to “take appropriate precaution,” when interacting with a vehicle on the registry, but does not define “appropriate precaution.” NMAG states that appropriate precautions may depend on the particular condition or disability of the driver or occupant, and points out that the bill only describes the appropriate precautions to be taken for individuals with seizure disorder and photosensitive epilepsy.

TRD states that it may not be necessary to create a registry, if MVD is able to accommodate the information necessary to satisfy the intent of HB 136 within the data fields of its vehicle system (Tapestry). Law enforcement officers are able to view MVD driver and vehicle records through an interface within Tapestry. Adding data fields to Tapestry would accomplish the same goal of creating a registry.

TRD notes that the bill raises potential HIPAA issues. MVD would need to work with the Human Services Department’s (HSD) Office of General Counsel to make sure that any authorization an applicant with medical conditions will sign authorizing their medical conditions to go into the registry or MVD vehicle records complies with HSD rules pertaining to HIPAA.

TRD recommends an amended effective date of January 1, 2020, in consideration of the effort necessary to implement the bill.

## **ADMINISTRATIVE IMPLICATIONS**

According to DPS, operational issues might arise for law enforcement officers depending on how the information is accessed by or available to an officer during a traffic stop. DPS states that, ideally, notification would be made via vehicle registration during an initial traffic stop call into dispatch. Dispatch would conduct a National Crime Information Center (NCIC) to check on the license plate, which would reveal the disability, and that information would be relayed to the officer conducting the traffic stop.

DPS notes that license plate information is usually relayed back to the officer before the officer’s vehicle comes to a complete stop or before the officer first approaches the stopped vehicle to speak with the driver. If an officer only had access to a web-based application to get the information from the registry, it would be a safety concern for officers and not a practical application to implement in the field. Officers are trained to exit their police units once they come to a complete stop during a traffic stop and not remain in the driver’s seat of their police unit for purposes of accessing the internet.

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