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HOUSE BILL 275

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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AN ACT

RELATING TO MOTOR VEHICLES; CREATING THE ORAL FLUID ROADSIDE
DETECTION PILOT PROJECT TO TEST FOR THE PRESENCE OF DRUGS WHEN
A DRIVER IS STOPPED FOR SUSPICION OF DRIVING UNDER THE
INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; COLLECTING DATA TO
DETERMINE THE MAGNITUDE OF THE PROBLEM OF DRIVING UNDER THE
INFLUENCE OF DRUGS AND THE SUCCESS OF THE PILOT PROJECT;
SPECIFYING AREAS OF PARTICIPATION IN THE PILOT PROJECT; MAKING
AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] ORAL FLUID ROADSIDE DETECTION
PILOT PROJECT CREATED--ADMINISTRATION--LOCATIONS--HYPOTHESIS--
DATA COLLECTION--EVALUATION.--

A. As used in this section:

(1) "department" means the department of

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1 public safety;

2 (2) "handheld roadside detection device" means
3 a portable screening instrument that can detect the presence of
4 one or more drug categories through the collection of oral
5 fluid;

6 (3) "oral fluid" means saliva that is
7 collected by a swab or by spitting into a vial; and

8 (4) "pilot" means the oral fluid roadside
9 detection pilot project.

10 B. The "oral fluid roadside detection pilot
11 project" is created. The pilot is a four-year project
12 administered by the department and conducted by the state
13 police, sheriff's offices and selected municipal police
14 departments in Bernalillo, Dona Ana, San Juan, Lea and San
15 Miguel counties. The purpose of the pilot is to:

16 (1) investigate the efficacy of using handheld
17 roadside detection devices for oral fluid testing for the
18 presence of drugs when a law enforcement officer has reasonable
19 suspicion that a driver may be driving under the influence of
20 intoxicating liquor or drugs;

21 (2) determine if the handheld roadside
22 detection device can augment or replace certified drug
23 recognition experts, particularly in rural areas of the state
24 where such experts are not readily available; and

25 (3) determine if the use of the handheld

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1 roadside detection devices is an efficient and cost-effective
2 law enforcement aid that:

3 (a) shortens the time it takes for a law
4 enforcement officer to process a case of driving while under
5 the influence of intoxicating liquor or drugs; and

6 (b) increases the conviction rates for
7 persons arrested for driving while under the influence of
8 intoxicating liquor or drugs.

9 C. The department shall convene an expert panel to
10 assist in designing the pilot, including:

11 (1) one district attorney, or the district
12 attorney's designee, from each judicial district encompassing a
13 county that is participating in the pilot;

14 (2) ten members representing counties and
15 municipalities participating in the pilot;

16 (3) two drug recognition experts;

17 (4) the secretary of health or the secretary's
18 designee;

19 (5) a state police officer responsible for
20 commercial vehicle enforcement;

21 (6) one drug testing expert from a testing
22 laboratory; and

23 (7) the director of the cannabis control
24 division of the regulation and licensing department.

25 D. The department shall promulgate rules for the

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1 conduct of the pilot in accordance with this section. The
2 department and the pilot participants shall apply for federal
3 grants available for the purposes of this section.

4 E. The department shall:

5 (1) select and purchase handheld roadside
6 detection devices, considering instrument reliability, drug
7 categories the device detects and the cut-off drug levels that
8 correspond to federal department of health and human services
9 regulations for drug levels for mandatory drug testing of
10 federal employees; provided that a law enforcement agency that
11 already possesses handheld roadside detection devices may use
12 those devices;

13 (2) provide the handheld roadside detection
14 devices to participating state police officers and local law
15 enforcement departments; and

16 (3) train participating law enforcement
17 officers in the use of the handheld roadside detection device
18 and, for officers who have not received the training, training
19 in advanced roadside impaired-driving enforcement.

20 F. Law enforcement officers who are not drug
21 recognition experts may participate in the pilot.

22 G. Roadside oral fluid testing is voluntary for the
23 driver and shall be used only to determine probable cause.

24 H. Detection of a drug category by a handheld
25 roadside detection device shall be confirmed by a blood test.

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1 I. Each participating law enforcement agency shall
2 collect monthly data to determine the efficacy of using the
3 handheld roadside detection devices for roadside drug testing
4 and arrest and conviction rates of drivers pursuant to Section
5 66-8-102 NMSA 1978, including for each agency:

6 (1) how many times drivers were requested to
7 submit to a roadside oral fluid test;

8 (2) how many drivers submitted to the test and
9 how many drivers refused the test;

10 (3) a list of each drug category detected and
11 the frequency of detection;

12 (4) whether a drug recognition expert was
13 called to the scene;

14 (5) how many positive and negative detections
15 were registered with the devices;

16 (6) of the positive detections, how many were
17 confirmed by a blood test;

18 (7) of the positive detections confirmed by a
19 blood test, the percentage of confirmation for each drug
20 category;

21 (8) of the positive detections, how many
22 drivers required medical intervention;

23 (9) of drivers arrested, how many went to pre-
24 trial diversion, how many went to trial and how many were
25 convicted;

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1 (10) how many drivers were sentenced to jail,
2 how many had their sentences suspended or deferred and how many
3 were ordered to DWI school;

4 (11) how many drivers were charged or
5 convicted with a previous incident of driving while under the
6 influence of intoxicating liquor or drugs;

7 (12) whether there were any circumstances in
8 which weather did not permit or complicated the collection and
9 testing of oral fluid; and

10 (13) any other data the department considers
11 necessary to evaluate the pilot.

12 J. The department shall use the data collected to
13 evaluate:

14 (1) the accuracy of the technology;

15 (2) its ease of use;

16 (3) whether law enforcement officers found the
17 technology efficient and effective; and

18 (4) other relevant measures determined by the
19 department.

20 K. The department shall provide periodic reports to
21 the interim committee that studies corrections issues and a
22 final report to the governor and the legislature, including
23 findings and recommendations.

24 SECTION 2. TEMPORARY PROVISION.--The department of public
25 safety shall have the oral fluid roadside detection pilot

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1 project operational by January 1, 2024.

2 SECTION 3. APPROPRIATION.--Six hundred fifty thousand
3 dollars (\$650,000) is appropriated from the cannabis regulation
4 fund to the department of public safety for expenditure in
5 fiscal years 2024 through 2027 to conduct an oral fluid
6 roadside detection pilot project and to purchase handheld
7 roadside detection devices for pilot project participants, to
8 pay per diem and mileage to the expert panel convened to assist
9 the department in designing the pilot project and to pay other
10 expenses related to the pilot project. Any unexpended or
11 unencumbered balance remaining at the end of fiscal year 2027
12 shall revert to the cannabis regulation fund.

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