

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/24/2025

Check all that apply:

Bill Number: HB105

Original Correction
Amendment Substitute

Sponsor: Rep. Andrea Reeb

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Traffic Offense Video Testimony

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

Section 1 adds a new section to the Implied Consent Act, NMSA 1978, §§ 66-8-105 to -112 (2019). It provides that an analyst may appear by interactive video at court proceedings if either party subpoenas the analyst to testify for any purpose. It requires the appearance to provide a full and meaningful opportunity to question and cross-examine the witness in plain sight and clear hearing of the judge, jury, all parties, and counsel with the witness able to see and hear the proceeding clearly.

Section 2 subsection A changes language from “any person” to “a person who operates a motor vehicle” and changes “his” to “person,” removing the gender reference.

Section 2 also adds subsection C to Section 66-8-107, the statute providing that any person who operates a motor vehicle is deemed to provide consent to chemical tests of the person’s breath or blood. The new proposed subsection C provides that “the defendant is deemed to have given consent to the analyst’s or toxicologist’s appearance by means of interactive video” testimony if the analyst is subpoenaed to testify at a court proceeding about a chemical test performed pursuant to Section 66-8-107.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

This bill raises concerns under the Confrontation Clause of the United States Constitution when applied to criminal trials. See U.S. Const. Amend. 6; N.M. Const. Art. II, Sec. 14. In *State v. Thomas*, 2016-NMSC-024, ¶ 29, the New Mexico Supreme Court “adopted” the rule generally requiring face-to-face confrontation from the United States Supreme Court in *Maryland v. Craig*, 497 U.S. 836 (1990) in a case that reversed a conviction where a forensic analyst testified via

video. Under *Craig*, “[a] criminal defendant may not be denied a physical face-to-face confrontation with a witness who testifies at trial unless the court has made a factual finding of necessity to further an important public policy and has ensured the presence of other confrontation elements concerning the witness testimony including administration of the oath, the opportunity for cross-examination, and the allowance for observation of witness demeanor by the trier of fact.” The Court in *Thomas* recognized that our Court of Appeals has consistently applied *Craig* when analyzing the admissibility of live two-way video testimony under the Confrontation Clause and that the “vast majority of courts from other jurisdictions, both state and federal, are in accord.” Id. ¶ 28. The New Mexico Court of Appeals has applied *Craig* to not include “convenience” as “necessity” to satisfy the *Craig* rule. See *State v. Smith*, 2013-NMCA-081, ¶¶ 9-10 (applying *Craig* and reversing a conviction based on improper video testimony from an SLD analyst in a DUI prosecution). Therefore, neither an analyst’s busy schedule, inconvenience to the employer laboratory, nor a prosecutor’s purpose of expediting a hearing is sufficient to constitute necessity under *Craig*. Id.; see also *Thomas*, 2016-NMSC-024, ¶ 30 (“Inconvenience to the witness is not sufficient reason to dispense with this constitutional right.”).

This bill may violate the *Craig* standard. While it requires the video testimony to include other confrontation elements, it does not require specific findings from the trial court on necessity and furtherance of an important public policy before an analyst is allowed to testify via video. Although the bill would only apply to traffic offenses such as DUI prosecutions, its categorical requirement of video testimony while obviating the need for individualized findings would probably not satisfy *Craig*, even if it generally furthers an important policy. *Craig* requires case-by-case, particularized findings of both necessity and furtherance of an important public policy before face-to-face confrontation can be denied. See *Smith*, 2013-NMCA-081, ¶ 5; *Thomas*, 2016-NMSC-024, ¶ 30.

PERFORMANCE IMPLICATIONS

In Section 1 of the proposed Bill, the language “with the witness able to clearly see and hear the proceeding” can be read to require that the witness who is testifying by video should also be able to “see and hear” everything that is happening in the courtroom during the proceeding. The law requires that the Defendant be confronted with the witness testimony. There is no requirement in the law that the witness who is testifying be confronted with everything going on in the courtroom. The witness would need to be able to hear what the judge, jury, parties, and counsel are saying but does not necessarily need to see everything going on in the courtroom. The current video setup in most court rooms across the State does not allow for individuals appearing by video to be able to see and hear everything going on in the courtroom. Therefore, that specific language could require that all court rooms across the State be required to significantly upgrade their video capabilities so that the witness that is testifying by video can “clearly see and hear the proceeding.”

Video capabilities in courtrooms will likely need to be significantly upgraded to meet the required language proposed in the bill and to meet the needs of Defendants’ Constitutional right to confrontation of witnesses against them.

ADMINISTRATIVE IMPLICATIONS

It is likely that the use of this proposed legislation if enacted will result in appeals increasing the case loads of the district and appellate courts.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

In *Melendez-Diaz v. Massachusetts*, the United States Supreme Court specifically stated, “States are free to adopt procedural rules governing objections.” 557 U.S. 305, 327. The Court further stated, “There is no conceivable reason why [the Defendant] cannot similarly be compelled to exercise his Confrontation Clause rights before trial.” *Id.*

Consider amending to clarify that the Defendant may assert their objection to a video appearance prior to trial.