

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

AgencyAnalysis.nmlegis.gov and email to billanalysis@dfa.nm.gov

(Analysis must be uploaded as a PDF)

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: HB 106 Original Correction
 Amendment Substitute

Sponsor: Rep. Andrea Reeb **Agency Name and Code** AOC
Short Title: DWI Blood Testing **Number:** 218
Title: _____ **Person Writing** Charlene Romero
Phone: 505-490-5149 **Email** aoccar@nmcourts.gov

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

BILL SUMMARY

Synopsis: HB 106 amends multiple statutes related to Driving Under the Influence of Intoxicating Liquor or Drugs and Operating a Motorboat under the Influence of Intoxicating Liquor or Drugs. The bill proposes changes to the requirements for chemical blood testing for individuals suspected of operating a vehicle or motorboat while under the influence of intoxicating liquor or drugs and specifies the medical professionals authorized to withdraw blood in the performance of chemical blood tests.

HB 106 proposed amendments include:

- Section 66-8-102 NMSA 1978: clarifies that one of the circumstances of which aggravated driving under the influence of intoxicating liquor or drugs consists is refusing to submit to chemical breath testing, as provided for in the Implied Consent Act, and in the judgment of the court, based upon evidence of intoxication presented to the court, the driver was under the influence of intoxicating liquor or drugs. (Current law refers to refusing to submit to “chemical testing.”)
- Section 66-8-103 NMSA 1978: clarifies that the following persons are qualified to perform a chemical blood test: physician; licensed professional or practical nurse; emergency medical technician or certified phlebotomist; or a technologist employed by a hospital or physician, and shall not, along with a person assisting in the performance of a test or a hospital where blood is withdrawn in the performance of the test, be held liable in any civil or criminal action for assault, battery, false imprisonment or any conduct of a police officer except for negligence.
- Section 66-8-104 NMSA 1978: amends the statute references intended to authorize a police officer or judicial probation officer to make an arrest or direct the performance of a chemical blood test in the performance of the officer’s official duties and as otherwise authorized by law from Section 64-8-103 or 64-8-104 to 66-8-103 or 66-8-104 NMSA 1978.
- Section 66-8-111 NMSA 1978:
 - In Subsection A, adds cannabis as one of the substances that may result in the issuance of a search warrant authorizing chemical testing if a person is suspected of driving under the influence alcohol, cannabis or a controlled substance causing the death or great bodily injury of another person, or if there is probable cause to believe that the person has committed a felony or misdemeanor while under the influence of alcohol, cannabis or a controlled substance and that chemical tests as provided in Section 66-8-107 NMSA 1978 will produce material evidence in a criminal prosecution.
 - Amends Subsection B to provide that a person’s charge may be aggravated pursuant to the provisions of Section 66-8-102 NMSA 1978 if a person that is arrested for a violation of an offense enumerated in the Motor Vehicle Code refuses chemical tests as provided in Subsection A of this section upon request of a law enforcement officer and the person does not cause great bodily injury of another person or there is probable cause to believe that the person committed a misdemeanor while under the influence of alcohol, cannabis or a controlled substance.

- Adds new Subsection G which provides the definition of cannabis including cannabis plants, cannabis extract and cannabis products that may also contain other ingredients.
- Section 66-8-111.1 NMSA 1978: clarifies that a request for or a direction to administer a chemical test may be made pursuant to Sections 66-8-107 and 66-8-111 NMSA 1978.
- Section 66-13-6 NMSA 1978: clarifies that the following persons are qualified to perform a chemical blood test: physician; licensed professional or practical nurse; emergency medical technician or certified phlebotomist; or a technologist employed by a hospital or physician, and shall not, along with a person assisting in the performance of a test or a hospital where blood is withdrawn in the performance of the test, be held liable in any civil or criminal action for assault, battery, false imprisonment or any conduct of a law enforcement officer except for negligence.
- Section 66-13-7 NMSA 1978: provides that nothing in the Boating While Intoxicated Act is intended to authorize a police officer or a judicial or probation officer to make an arrest or to direct the performance of a chemical blood test except in the performance of that person's official duties and as otherwise authorized by law.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any challenges to the administration of chemical testing, blood or breath, and to the imposition of penalties flowing from test administration or the refusal to submit to chemical testing. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

It is impermissible to compel a warrantless blood test of an individual, under both the US and New Mexico constitutions. *See Birchfield v. North Dakota*, 136 S.Ct. 2160 (2016); *State v. Vargas*, 2017-NMSC-029. It is also impermissible to criminally punish an individual for refusing to submit to a warrantless blood test, including imposing aggravated DWI penalties. *Id.* Under Section 66-8-111 NMSA 1978, New Mexico law enforcement officers are limited in how and when they can request a warrant for a blood test of a suspected DWI offender. Under the current version of the law, officers may only request a blood test warrant if there is probable cause to believe that the person committed a felony level DWI offense. Breath tests, which may be compelled absent a warrant, do not show whether someone is operating a motor vehicle under the influence of anything other than alcohol. Therefore, under the current version of the law, officers have a difficult time collecting evidence to show that a non-felony level DWI defendant was operating a motor vehicle under the influence of drugs. The amendment proposed by this Bill would allow officers to obtain warrants to test the blood of non-felony level DWI defendants, in compliance with constitutional requirements.

The New Mexico Supreme Court recently held that an emergency department technician, licensed as an EMT, is qualified to draw blood under the Implied Consent Act, so long as they were employed to do so by a hospital or physician and have adequate training and experience.

State v. Adams, S-1-SC-37722 (December 16, 2021). Furthermore, the Administrative Code additionally states that “[t]he term laboratory technician shall include phlebotomists.” 7.33.2.15 (A)(1) NMAC. Therefore, replacing the term “laboratory technician” with “emergency medical technician or certified phlebotomist” is consistent with current case law and regulations.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of state courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS