

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

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

Check all that apply: Date January 23, 2025  
Original  Amendment \_\_\_\_\_ Bill No: HB 106-280  
Correction  Substitute \_\_\_\_\_  
\_\_\_\_\_

Sponsor: Andrea Reeb Agency Code: 280 - Law Offices of the Public Defender  
Short DWI Blood Testing Person Writing Steve Forsberg  
Title: \_\_\_\_\_ Phone: 505.796.4405 Email Steven.forsberg@lopdm.us

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
N/A	N/A	N/A		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**Duplicates/Conflicts with/Companion to/Relates to:**

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 106 would expand the authorization for, and regulation of, blood-testing under the DWI (drugs and alcohol) statute by including testing for substances other than alcohol, and by authorizing search warrants for blood in circumstances where there is only probable cause to suspect that a misdemeanor has been committed. It also makes changes to the list of persons who are authorized to actually draw the blood to be tested.

**FISCAL IMPLICATIONS**

To the extent that the bill increases the number of warrants for blood draws in the State, the immediate fiscal impact will fall on the judiciary (more warrants to consider --usually at night) and medical service providers, not the LOPD. However, because the blood draws might lead to more DWI cases being charged, that could lead to an increase in LOPD caseload.

When a DWI case based on blood testing proceeds to trial, the prosecution generally needs the additional testimony of the individual who drew the blood, the Scientific Laboratory Division technician(s) who tested the blood, the reviewer who ensured the proper laboratory procedures were followed and a toxicology expert to testify regarding the effects of the particular drug and quantity on the motorists' ability to safely operate a motor vehicle. Effective defense requires engagement of comparable defense experts in many such cases.

The impact on indigent criminal defense is hard to assess. Blood-draw evidence is typically decisive on the issue of guilt or innocence in DWI cases (where the offense is based on alcohol intoxication). The bill might result in more alcohol-intoxication cases being settled by plea bargain. On the other hand, whenever the State draws an unwilling person's blood, it implicates constitutional rights, and invites litigation on the lawfulness of the search.

LOPD could probably absorb the fiscal impact of HB 106 but depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed LOPD FTEs for the office as well as a need for funds for contract counsel compensation. Such cases could likely be handled by entry-level Public Defender attorneys (Assistant Trial Attorneys). "The recurring agency cost of an LOPD Associate Trial Attorney's mid-point salary including benefits is \$104,860 in Albuquerque/Santa Fe and \$113,350 in the outlying areas (due to salary differential required to maintain qualified employees). For more experienced attorneys handling more

complex felonies, those costs are \$114,670 and \$123,160, respectively. Recurring statewide operational costs per attorney would be \$12,780 with start-up costs of \$5,210; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$102,226.”

## **SIGNIFICANT ISSUES**

*Birchfield v. North Dakota*, 579 U.S. \_\_\_, 136 S.Ct. 2160 (2016) and *State v. Vargas*, 2017-NMCA-023 established that the Fourth Amendment does not permit warrantless blood tests incident to arrest for driving under the influence and that motorist cannot be deemed to have consented to submit to a blood test on pain of committing a criminal offense. These cases establish the constitutional requirement of a warrant before a blood test can be compelled. Under the current statutory scheme, law enforcement can only obtain a warrant for a blood draw on driving under the influence of alcohol (DUI) and driving under the influence of drug (DUID) arrests when there is probable cause that the person has caused the death or great bodily injury of another person or committed a felony.

*State v. Adams*, 2022-NMSC-008, 503 P.3d 1130, established that the Implied Consent Act in its present form already allows the admission at trial of blood evidence collected by “emergency department technicians.” The expanded statutory language in this regard is therefore unnecessary but would codify the *Adams* holding. (The same question with regard to collection by a contractor phlebotomist is currently pending in the Court of Appeals in *State v. Bailey*, No. A-1-CA-41442.)

## **PERFORMANCE IMPLICATIONS**

### **Blood Evidence Not Always Necessary**

The Implied Consent Act requires submission to a breath test. Refusal can be used as evidence of guilt – often to great success – at trial. This bill would therefore be most impactful on cases involving drugs, not alcohol, which cannot be detected by a breath test. In other words, these blood draw warrants are most desired if a person gives a breath test showing no alcohol, and the officer wants to test for drugs. While this is understandable, there is other evidence of impairment that the State can present at trial, including observations of bad driving and officer descriptions or videos of a defendant’s behavior during the investigation and arrest process. Indeed, an officer’s lapel camera video of a defendant can be highly effective, as jurors – in their life experience and common sense judgment – can see when a person is obviously impaired, despite a clean breath test for alcohol. The State can also present Drug Recognition evidence from an officer specifically trained to recognize impairment by common drugs and a defendant’s refusal of testing can be used as evidence of consciousness of guilt.

### **Blood Evidence is Burdensome to Present**

Increasing the number of cases involving a blood draw will be a strain on an already strapped system. To get a blood draw takes at least one officer off of the street, often for hours, in order to get the blood draw at a hospital in the first place. Then, the blood has to be tested by an authorized laboratory – labs that are already heavily inundated with crime-related testing and where felonies such as sexual assaults and homicides should be prioritized. Thereafter, to admit blood test results in court in the DUI case itself will require expert testimony from the scientific laboratory analyst who must be available for pretrial interviews, and thereafter has to appear for

trial. Analysts often have to drive hours from the lab to sit around and wait for hours to testify. In many cases, it may also involve a defense expert witness, and where 80% of defendants are represented by Public Defenders, that cost is ultimately borne by taxpayers, too.

The law currently limits the incurring of these time and resource costs to felony DUI cases and/or cases involving an accident where someone was injured. This is a rational and reasonable limitation in the interests of judicial efficiency and the recognition that blood results will not always be necessary to achieve a conviction.

#### **ADMINISTRATIVE IMPLICATIONS**

None noted.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None that the writer is aware of.

#### **TECHNICAL ISSUES**

None.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None noted.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

#### **AMENDMENTS**

None identified.