

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 the analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Date Prepared: 24JAN2025 *Check all that apply:*
Bill Number: HB106 Original Correction
 Amendment Substitute

Sponsor: Rep. Andrea Reeb **Agency Name and Code:** _____
Short Title: DWI Blood Testing **Number:** 790 – Department of Public Safety
Person Writing: Matthew Broom, Deputy Chief
Phone: 5757601485 **Email:** Matthew.broom@dps.nm.go

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

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

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

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

(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	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act: Similar to 2023 HB158

SECTION III: NARRATIVE

BILL SUMMARY

Amends the Motor Vehicle Code to include offenses for driving a motor vehicle under the influence of cannabis as well as alcohol and controlled substances. The bill also clarifies procedures for probable cause and search warrants in cases of chemical test refusal. A search warrant is required when probable cause exists that a person drove under the influence of alcohol, cannabis, or controlled substances, causing death or great bodily injury, or committed other felonies or misdemeanors while impaired. Refusal to submit to a blood test in such cases may result in aggravated DUI charges, even for misdemeanor offenses or felonies that do not involve great bodily harm.

In addition, the legislation aligns the Boating While Intoxicated Act with DUI laws, extending the same liability exemptions to medical professionals performing chemical blood tests for BWI cases. These updates aim to improve public safety by addressing emerging substance use trends, ensuring consistent enforcement protocols, and clarifying legal standards for aggravated charges and testing procedures.

FISCAL IMPLICATIONS

No Fiscal Impact to DPS as Law enforcement agencies already order blood kits in the event it is needed throughout the year.

SIGNIFICANT ISSUES

HB 106 addresses operational challenges in DWI enforcement by increasing access to qualified personnel for blood tests. This change is significant in rural or underserved areas where law enforcement faces delays due to the unavailability of traditional medical staff. By including emergency medical technicians and certified phlebotomists, the bill ensures timely evidence collection, potentially improving case outcomes and public safety. Under the current version of NMSA 66-8-111, there have been challenges in court by defense counsel as to the person who did the blood draw not being one of the listed types of personnel listed in the statute as qualified to do blood tests for defendants to be convicted under the statute.

The addition of the words “or misdemeanor” in Section 4 on page 13, line 24 allows law enforcement to obtain a search warrant where there is probable cause to believe a person is driving under the influence and refused to submit to testing. This is referred to as the *Birchfield* Fix: Presently, the only way that law enforcement can obtain a search warrant for chemical testing is if the person who was driving while under the influence thereby causing the death or great bodily injury of another person, or the person committed a felony while under the influence. See *Birchfield v. North Dakota*, 136 S.Ct. 2160.

Birchfield v. North Dakota (2016) and *State v. Vargas* (2017) established the constitutional requirement of a warrant before a blood test can be compelled. In New Mexico, law enforcement can only obtain a warrant for a blood draw on DWI and driving under the influence of drug (DUID) arrests when there is probable cause the person caused the death or great bodily injury of another person or committed a felony.

PERFORMANCE IMPLICATIONS

New Mexico has long struggled with a high rate of DWI-related crashes, consistently ranking

among the worst in the nation for traffic accidents involving alcohol, drugs, or both. Year after year, New Mexico law enforcement officers make thousands of DWI arrests and handle hundreds of impaired driving crashes that result in deaths or injuries. Implementing this proposed change would provide our state with an additional avenue to address non-felony offenders who operate a motor vehicle under the influence of alcohol, cannabis, or other controlled substances.

By enhancing the process for handling DWI offenses, this change could also provide much-needed clarity and consistency in the collection of evidence specific to impaired driving, ensuring that it aligns with constitutional protections. Additionally, establishing clearer guidelines will help standardize procedures across law enforcement agencies, leading to more effective enforcement and, ultimately, a safer New Mexico.

ADMINISTRATIVE IMPLICATIONS

The Department of Public Safety and related agencies will need to update training materials, procedures, and inter-agency coordination to integrate newly authorized medical professionals into the process. Additionally, law enforcement officers may require briefings to ensure they understand the expanded roles and responsibilities introduced by this bill. No significant administrative challenges are anticipated beyond these adjustments.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill aligns with and complements existing DWI enforcement statutes under the Motor Vehicle Code. It strengthens the Implied Consent Act by improving the practical application of chemical blood test requirements.

TECHNICAL ISSUES

There is some inconsistency in the bill since in Section 4, page 14, line 13, the bill refers to “cannabis or drugs” and in most places the bill refers to “cannabis or a controlled substance.” Under federal laws, cannabis is still a controlled substance, but under New Mexico law cannabis is no longer considered a controlled substance with the legalization for recreational use of cannabis in recent years. It is more precise segregating cannabis out from controlled substances or using the term drugs. This could cause some issues in enforcement of NMSA Section 66-8-111(B).

OTHER SUBSTANTIVE ISSUES

No substantive issues for DPS.

ALTERNATIVES

DPS does not have any alternatives.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Failure to enact this legislation could perpetuate delays in evidence collection, particularly in areas with limited access to licensed physicians or nurses. This might hinder DWI enforcement, weaken prosecutorial efforts, and allow offenders to evade accountability due to procedural gaps. Public safety could be compromised, as impaired drivers may face fewer deterrents. Law Enforcement Agencies would continue to be unable to obtain a search warrant for an offender’s blood unless the offense is to a felony level.

AMENDMENTS

DPS does not have any amendments at this time.