

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: 1/24/25 *Check all that apply:*
Bill Number: HB 567 Original Correction
 Amendment Substitute

Sponsor: Rep. Jimmy G. Mason
 Rep. Randall T. Pettigrew
Short Title: DWI Saliva Testing

Agency Name and Code Number: AOC 218

Person Writing: Charlene Romero

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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

BILL SUMMARY

Synopsis: HB 567 amends current statutes to provide for oral fluid testing to determine if a person was driving under the influence of an intoxicating liquor or drug.

HB 567 amends the current statutes as follows:

- Section 66-8-107 NMSA 1978 to add the testing of oral fluid as a method of testing for intoxication with relation to the Implied Consent Act.
- Section 66-8-109 NMSA 1978 to confirm that the limitation of person authorized to withdraw blood for purposes of determining alcohol and drug content per Section 66-8-103 does not apply to the testing of oral fluid.
- Section 66-8-110 NMSA 1978
 - Subsection B
 - Adds results of oral fluid to the current methods to evidence use of alcohol or drugs.
 - Provides that test results showing the presence of a controlled substance shall result in the presumption that the person is under the influence of drugs.
 - Subsection C
 - Adds positive results of oral fluid tests to the current tests requiring an officer to charge a person with a violation of Section 66-8-102.
 - Adds the presence of a controlled substance in the blood, breath or oral fluid of a person to the requirement for charging a person with a violation of Section 66-8-102.
 - Subsection D
 - Adds positive results of oral fluid tests to the current tests requiring revocation of a person's driving privileges when that person is under the age of twenty-one.
 - Adds the presence of a controlled substance in the blood, breath or oral fluid requiring revocation of a person's driving privileges when that person is under the age of twenty-one.
 - Subsection E
 - Adds the presence of a controlled substance and results of oral fluid tests to the provisions allowing for introduction of test results resulting from tests administered more than three hours after a person was driving as evidence.
 - Subsection G
 - Adds a new Subsection G that provides for the determination of the presence of controlled substance to be based on a test of the person's blood or oral fluid that shows the presence of the controlled substance.
 - Renumbers current Subsections G and H to Subsections H and I.
- Section 66-8-111.1 NMSA 1978 adds the requirement for an officer to serve immediate written notice of revocation and right to a hearing before the administrative hearings office when the results of a chemical test indicate the presence of a controlled substance.

- Section 66-8-111 NMSA 1978
 - Subsection C – adds test results indicating the presence of a controlled substance to the reasons a person’s privilege to drive is revoked.
 - Subsection E
 - Adds a new Subsection E that provides for the determination of the presence of controlled substance to be based on a test of the person’s blood or oral fluid that shows the presence of the controlled substance.
 - Renumbers current Subsections E and F to Subsections F and G.
- Section 66-8-112
 - Subsection E – Adds test results that indicate the presence of a controlled substance to the issues that the administrative hearings are limited to.
 - Subsection F – Adds the hearing officer finding that test results indicate the presence of a controlled substance to the issues requiring the administrative hearings office to enter an order sustaining the revocation or denial of a person’s license or privilege to drive.

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 effect that this would have on DWI prosecutions. 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. If this pilot project increases the number of DWI charges filed in the courts, the courts will require additional resources to handle the increase.

SIGNIFICANT ISSUES

HB 567 amends multiple sections related to driving under the influence to allow for testing for the presence of alcohol and controlled substances in oral fluids. In particular, multiple subsections in Section 66-8-110 NMSA 1978 are amended to provide for testing of oral fluids to determine alcohol concentration in a person’s oral fluids. However, the amendments do not address the following:

- Subsection C adds positive results of oral fluid tests to the current tests requiring an officer to charge a person with a violation of Section 66-8-102. However, the bill does not amend Section 66-8-102 NMSA 1978 to include the alcohol concentrations in oral fluids that would result in a violation of Driving Under the Influence of Intoxicating Liquor.
- Subsection F currently states that the “determination of alcohol concentration shall be based on the grams of alcohol in one hundred milliliters of blood or the grams of alcohol in two hundred ten liters of breath.” HB 567 does not provide the concentration for oral fluids.

HB 567 also adds a positive test result indicating the presence of a controlled substance to the reasons for charging a person with a driving under the influence as well as revoking a person’s privilege to drive. While multiple states have included provisions for testing of oral fluids with respect to driving under the influence, an article by the National Conference of State Legislatures (NCSL) on May 10, 2021 noted two issues with determining impairment based solely on drug tests because of “the lack of an established relationship between the concentration of a drug and the impairment it causes.” In addition, the article references the potential for erroneous test

results when using roadside drug screening. See <https://www.ncsl.org/transportation/states-explore-oral-fluid-testing-to-combat-impaired-driving>. In *State v. Morales*, the Court of Appeals held “that the [s]tate must prove the scientific reliability of a drug field test in a manner consistent with the *Daubert/Alberico* standard, if it wishes to use the results of that test at trial to identify a controlled substance.” If the use of testing devices used to test oral fluids has not been tested to validate the effectiveness of the devices, use of the devices may result in increased appeals based on test results obtained from oral fluids.

PERFORMANCE IMPLICATIONS

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

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

ADMINISTRATIVE IMPLICATIONS

There may be an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 106 also amends Sections 66-8-111 and 66-8-111.1 NMSA 1978

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS