

LFC Requester:	
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AGENCY BILL ANALYSIS
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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:
Original Amendment
Correction Substitute

Date Jan. 21, 2017
Bill No: HB 129

Sponsor: Sarah Maestas Barnes
Short DWI Blood Test Requirements
Title: _____

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	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 129 would delete the existing requirement that for a law enforcement officer to obtain a search warrant to obtain blood for a chemical test, in addition to probable cause that someone drove a motor vehicle while under the influence of alcohol or a controlled substance, and there must be probable cause that while doing so they caused the death or great bodily injury of another person, or probable cause that they committed a felony while under the influence of alcohol or a controlled substance. The bill would also make a couple of minor grammatical changes to make the implied consent statutory language gender neutral.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 129 would amend the implied consent act to provide three separate options for a law enforcement officer to obtain a sample from a person they reasonably believed to have been driving while intoxicated (“DWI”): express consent, exigent circumstances, and pursuant to a search warrant approved by a municipal judge, magistrate or district judge if one of two specific circumstances are present. Now, to obtain a search warrant, in addition to probable cause for DWI the officer must also show probable cause that the person thereby caused the death or great bodily injury (“GBI”) of another person, or probable cause they committed a felony while under the influence of alcohol or a controlled substance. See, Sect. 66-8-111(A), NMSA 1978. Cf., Sect. 66-8-101, NMSA 1978 (Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle and GBI is the injuring of a human being which creates a high probability of death or which causes serious disfigurement or which results in permanent or protracted loss or impairment of the function of any member or organ of the body while under the influence of intoxicating liquor or any drug.)

Law enforcement officers may not have timely information on whether a person injured by a suspected DWI driver suffered death or GBI, especially for motor vehicle crashes in rural areas of New Mexico where medical providers can be far from a motor vehicle scene and officers have limited assistance. Also, timing is an essential element of the crime of *per se* DWI. See, *State v. Baldwin*, 2001-NMCA-063. Three hours is the threshold for DWI chemical tests, although test results may be introduced even if they were taken after three hours. See, Sect. 66-8-102 and Sect. 66-8-110(E), NMSA 1978.

Felony DWI can be the underlying felony justifying issuance of a search warrant to obtain a blood or breath sample for chemical testing. See, State v. Duquette, 2000-NMCA-006. Frequently a law enforcement officer does not know or have timely access to information on whether the current DWI charge would be a felony and it is harder to research that issue outside of normal business hours. Determining whether a person committed a fourth or subsequent DWI, so it would be a felony, can delay getting a search warrant affidavit prepared and presented to an appropriate judge to obtain a chemical test in under three hours from the time the suspected offender was driving. These difficulties are exacerbated after normal business hours and in rural areas.

Removing the requirements that a warrant can be issued only for the two specific circumstances—death or GBI or a felony—noted in the statute will enable law enforcement officers to file appropriate charges, or not, if the chemical test(s) indicate otherwise (Cf. Sect. 66-8-110(B)(1), NMSA 1978. When an alcohol concentration of the person tested is less than .04, it shall be presumed they were not under the influence of intoxicating liquor.) Refusing consent for a requested chemical test now carries administrative penalties of driver’s license revocation for presumptively one year (See, Sect. 66-8-111(B)—(C), NMSA 1978) but can deny a factfinder the best evidence regarding whether they were under the influence of intoxicating liquor or drugs and should be subject to more severe sanctions. Now, even if someone refuses a chemical test they cannot be convicted of aggravated DWI based on their refusal. See, State v. Vargas, No. 33,718 (Ct. App.) Oct. 25, 2016, citing, Birchfield v. North Dakota, ___ U.S. ___, 136 S. Ct. 2160 (2016).

Since “exigent circumstances” is not defined in the bill if a law enforcement officer were to seek a compelled chemical test using that option they are very likely to have any results challenged because search warrants are almost always favored. Dissipation of alcohol, by itself, is not enough to justify a warrantless search although it can be one of the factors in a reasonableness analysis. See, State v. Nance, 2011-NMCA-048.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS