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FISCAL IMPACT REPORT

SPONSOR Rehm/ Roybal Caballero **ORIGINAL DATE** 1/28/2019
LAST UPDATED _____ **HB** 109
SHORT TITLE Careless Driving Penalty **SB** _____
ANALYST Torres

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	None	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
 Public Defender Department (PDD)
 New Mexico Attorney General (NMAG)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

HB109 amends Section 66-8-114 NMSA 1978 to add an additional penalty to the careless driving statute; it would create a misdemeanor for instances in which careless driving results in death or great bodily harm. The misdemeanor penalty would be an ordinary misdemeanor as opposed to a traffic misdemeanor or a special penalty traffic provision, which often apply to traffic infractions. Therefore, violators would face up to three hundred sixty-four days imprisonment and a \$1,000.00 fine. This would increase the punishment from ordinary careless driving, which is a traffic code misdemeanor, carrying a maximum penalty of ninety days imprisonment or a \$300.00 fine.

“Great bodily harm” is defined by HB109 as an injury to another person that create a high probability of death, that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body.

FISCAL IMPLICATIONS

HB 109 carries a possibility of more than six months imprisonment. Such cases are automatically jury eligible, whereas presently, careless driving cases would not result in a jury trial. Consequently, such cases would demand more judicial resources. The courts, Public Defender Department (PDD), and Administrative Office of the District Attorneys (AODA) note that costs are likely to increase, but were unable to provide estimates.

Under the present statutory scheme, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. The Legislature and LFC are well aware of the myriad constitutional concerns implicated in forcing indigent criminal defendants to proceed without effective assistance of counsel.

SIGNIFICANT ISSUES

The PDD states that “careless driving is an infraction of negligence. However, criminal negligence presents a higher standard of proof than civil negligence and ordinarily requires the State to prove the perpetrator neglected a knowable risk. The majority of the criminal code is focused on intentional acts. Rather than creating additional criminal statutes of strict liability and negligence, existing civil remedies ordinarily provide a better fit for harm caused by vehicular negligence.”

The NMAG notes the following concerns:

The first issue is that if this misdemeanor is prosecuted in magistrate or metropolitan court, the State would only have six months from the date of a defendant’s arraignment to take a case involving death or great bodily harm to trial. Rule 6-506(B) NMRA. Failure to do so will result in a mandatory dismissal with prejudice. Rule 6-506(E)(2) NMRA. This timeline could be problematic as the true extent of a victim’s injuries may not be apparent for months. Further, OMI’s report on a victim may not be available for many months and then they may not be available on the scheduled trial date. The State, if close to the expiration of the six months, would not be able to continue without a defendant waiving time limits.

The second issue is that careless driving resulting in death would be a misdemeanor, while a charge of involuntary manslaughter is a fourth-degree felony. This seems incongruous, as it treats negligent driving that results in death as less harmful than other negligent acts that also result in death, as evidenced by different penalties for each crime.

The third issue is that as a misdemeanor, the case would initially remain with a police officer prosecuting the case (as opposed to an attorney prosecutor), requiring said officer to be responsible for complying with all the mandatory procedural requirements such as disclosing evidence to defense, submitting witness lists timely, obtaining expert witnesses, arranging pre-trial interviews, and obtaining discovery from other state agencies. Failure to comply with these deadlines may result in evidence suppression.

The fourth issue is that this new crime may implicate a victim’s rights, as the case would most likely be with an officer initially, so no victim advocate would be involved at the early stages as with attorney prosecutors. Thus, there would be no one to inform a victim of upcoming hearings and available resources.

The fifth issue is that the definition of “great bodily harm” in HB 109 is different than the definition of “great bodily harm” in NMSA 1978, Section 30-1-12. HB 109 omits “protracted” from its definition of great bodily harm. This omission results in a higher burden on the State since injuries that cause protracted loss or impairment would not qualify as great bodily harm under this definition.

The sixth issue is that the State could not move for pre-trial detention under Rule 5-409, even if a defendant has a long and repeated history of non-compliance with conditions of release, as the crime is only a misdemeanor. The State can seek pre-trial detention in felony cases.

ALTERNATIVES

Careless driving resulting in death or great bodily harm could be made a felony offense and not be subject to the six-month rule (referred to above), a District Attorney’s office would be involved from the inception of the case, a victim advocate would be available from the inception of the case, any appeal or new trial would be due to an error that occurred while the case was pending, and it would resolve the logical conflict relating to involuntary manslaughter.

The definition of “great bodily harm” should reference the definition in NMSA 1978, Section 30-1-12. For example, “D. As used in this section, “great bodily harm” means an injury to the extent defined in Section 30-1-12 NMSA 1978.”

Careless driving resulting in death or great bodily harm may be better suited under NMSA 1978, Section 66-8-101 as this section already deals with death and great bodily harm caused by either driving while under the influence of intoxicating liquor or reckless driving.

IT/al/sb