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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/26/21

SPONSOR Hickey LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Crime of Vehicular Manslaughter SB 344

ANALYST Chilton

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$12.4			\$12.4	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Taxation and Revenue Department (TRD)  
 Public Defender Department (LOPD)  
 Attorney General (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 Corrections Department (CD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 344 adds a section to the Motor Vehicle Code (Chapter 66 NMSA 1978) defining the crime of vehicular manslaughter and punishing this crime as a fourth degree felony, the basic sentence for which, as defined in Section 31-18-15 NMSA 1978) is 18 months with or without a fine of up to \$5,000.

Vehicular manslaughter is defined as causing the death of a person without malice, without at the same time committing another felony, and without committing any of the following misdemeanors: DWI (alcohol or drugs), resisting arrest, or reckless driving, which in turn is

defined in Section 66-8-113 as driving a vehicle “carelessly and heedlessly in willful and wanton disregard of the rights or safety of others.”

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

There is no appropriation in Senate Bill 344.

TRD indicates a cost to that agency: “This bill requires changes to the Administrative Office of the Courts (AOC) and Traffic and Criminal Software (TRACS) interfaces with MVD’s Tapestry system to add new charge codes and the corresponding statute. The estimated time to develop, test and implement the changes is approximately 240 hours or 6 weeks for an estimated \$12,400 of staff workload cost.”

Added to this would be the uncertain cost of incarcerating persons for this new fourth-degree felony, as pointed out by NMSC.

### SIGNIFICANT ISSUES

The crime of homicide by vehicle exists in New Mexico statute. Section 66-8-101 NMSA 1978 begins as follows:

[66-8-101. Homicide by vehicle; great bodily injury by vehicle.](#)

A. Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle.

B. Great bodily injury by vehicle is the injuring of a human being, to the extent defined in Section [30-1-12](#) NMSA 1978, in the unlawful operation of a motor vehicle.

C. Any person who commits homicide by vehicle or great bodily injury by vehicle while under the influence of intoxicating liquor or while under the influence of any drug or while violating Section [66-8-113](#) NMSA 1978 is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section [31-18-15](#) NMSA 1978, provided that violation of speeding laws as set forth in the Motor Vehicle Code [Articles 1 to 8 of Chapter 66, except [66-7-102.1](#) NMSA 1978] shall not per se be a basis for violation of Section [66-8-113](#) NMSA 1978.

The crime of vehicular manslaughter defined in Senate Bill 344 would thus be differentiated from “homicide by vehicle” in requiring that there be an absence of malice and an absence of the other enumerated exacerbating factors. As noted by NMAG, “The intent of this bill appears to be to provide for felony liability if the underlying act is any other misdemeanor.”

AODA expresses the following concern:

This bill will criminalize to a felony level conduct that is presently considered to be

accidental. ... If a person falls asleep at the wheel, is eating while driving, reaches for an object that draws their attention away from the road, is diabetic or suffers some other health condition that they are either aware of or unaware of, or otherwise engages in conduct that could be deemed careless, and they cause a collision that kills another person, they can face felony consequences.

AOC notes the following: According to Cornell Law School's Legal Information Institute, vehicular manslaughter is generally easier to prove than manslaughter because it requires an even less culpable mens rea. [https://www.law.cornell.edu/wex/vehicular\\_manslaughter](https://www.law.cornell.edu/wex/vehicular_manslaughter).

Section 30-2-3 NMSA 1978 governs the crime of manslaughter, splitting the crime between the third degree felony of voluntary manslaughter – manslaughter committed on a sudden quarrel or in the heat of passion – and the fourth degree felony of involuntary manslaughter – manslaughter committed in the commission of an unlawful act not amounting to a felony, or in the commission of a lawful act that might produce death in an unlawful manner or without due caution or circumspection.

NMAG expresses concern the definition of vehicular manslaughter might face legal challenge:

In *State v. Yarborough*, 1996-NMSC-068, 122 N.M. 596, the New Mexico Supreme Court held that careless driving could not be a predicate crime for an involuntary manslaughter conviction and that the crime of involuntary manslaughter was preempted by the more specific crime of homicide by vehicle. In *Yarborough*, the defendant was convicted of involuntary manslaughter by careless driving as a lesser included offense of homicide by vehicle by reckless driving. The Court held that the conviction could not be supported because it involved only civil negligence rather than the criminal negligence which was needed for a felony conviction. The Court also relied on its opinion of *Santillanes v. State*, 1993-NMSC-012, in which it construed the child abuse statute to require criminal, rather than civil, negligence.

This bill could face a similar challenge – i.e. that felony liability is imposed for acts that amount only to civil negligence.

The *Yarborough* case is also cited by LOPD as indicating that “the lack of a separate negligence requirement is problematic under longstanding criminal law principles.” LOPD continues:

New Mexico's current involuntary manslaughter rule adequately punishes conduct that is reckless and unintentionally results in the death of another person, while requiring a person act with criminal negligence. Expanding the scope with SB 344 would run afoul of the analysis in *Yarborough* and general principles of criminal law that require punishment proportional to mental culpability.

## PERFORMANCE IMPLICATIONS

LOPD notes:

If the State intends to file vehicular manslaughter charges in every case where there is a misdemeanor traffic violation, such as careless driving, that unintentionally results in the death of a person, that could result in a large number of new cases. Traffic accidents often need the expertise of accident reconstructionist and other experts to determine who was at fault and what conduct caused the accident, which can be costly for all parties.

**TECHNICAL ISSUES**

The Motor Vehicle Division of TRD requests delineation of which misdemeanors would be included (rather than just those excluded) in the definition of vehicular manslaughter and also requests specification as to whether the driver's license of a person convicted of vehicular manslaughter should be suspended or revoked.

NMAG points out the misidentification of the statute defining driving under the influence of alcohol or drugs. The correct citation is 66-8-102 NMSA 1978.

In page 1, line 21, there is an extra word: "not."

LAC/sb/rl