

LFC Requester:	
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**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 1/24/25

Bill No: HB 102-280

Sponsor: Andrea Reeb
Short Title: Violent Felonies for Meritorious Deductions

Agency Name and Code Number: Law Offices of the Public Defender -280
Person Writing: Jasmine Solomon
Phone: 505-395-2833 **Email:** jasmine.solomon@lopnm.

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 Expenditure 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 102 proposes to amend NMSA 1978, Section 33-2-34 (being Laws 1999, chapter 238, Section 1, as amended)) to add *second-degree* Homicide by a Vehicle or Great Bodily Harm by Vehicle as a discretionary Serious Violent Offense (SVO) for Earned Meritorious Deductions (EMDA), meaning the sentencing judge has the discretion to designate the conviction as an SVO based on the facts of that case, which has the result of limiting the defendant’s ability to earn deductions reducing their prison sentence for good behavior.

The legislation’s effective date would be July 1, 2025.

FISCAL IMPLICATIONS

Anyone facing a charge of homicide or great bodily harm by vehicle (DWI) would potentially face an increased sentence under the proposed this bill. Higher-penalties cases are somewhat more likely to go to trial. This may increase the likelihood that such cases will be taken to trial and appealed as opposed to being resolved through a plea. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Assessment of the impact on the LOPD upon enactment of this bill would be necessary after the implementation of the proposed higher-penalty scheme; since LOPD may need to hire more trial attorneys with greater experience to address these additional higher-penalty trials and ensure compliance with constitutional mandates of effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.)

Accurate prediction of the fiscal impact would be impossible to speculate. Presumably the courts, and DAs would be affected in similar measure to LOPD.

SIGNIFICANT ISSUES

Section 33-2-341(O) enumerates SVOs eligible for only 15% good time deductions. Subsection O(14) lists a subset of offenses that may or may not be SVOs, i.e., “discretionary SVOs” for which the sentencing judge has discretion in designating the crime as an SVO or not, depending on the specific circumstances of its commission. The impact of an SVO designation is

to reduce the eligibility for earned meritorious deduction from *up to* fifty percent to “up to a maximum of four days per month of time served.”

Prior to 2016, homicide by vehicle was always a third-degree felony, whether committed by DWI or reckless driving under NMSA 1978, Section 66-8-101(C) (2004). In 2016, the Legislature amended the statute with HB 83, reclassifying *DWI* homicide to a *second*-degree felony and increasing its basic sentence from six years to fifteen years, Section 31-18-15(A)(4), (8) (2016); without making any corresponding amendments to the EMDA, which continued to enumerate only “third degree” offenses from that statutory section.

Therefore, currently, second-degree DWI homicide is not identified in the EMDA as either a per se or discretionary serious violent offense, which by statutory definition makes it a nonviolent offense and makes it eligible to earn up to thirty days of good time deductions per month of time served under Section 33-2-34 (L)(3), (A)(2). This bill would restore the court’s ability to designate particular conviction as a serious violent offense, authorizing reduction of the sentence by only 15% instead of 50% for good behavior.

HB 102 seeks to align the EMDA for homicide by vehicle or great bodily harm by vehicle with the increase felony classification and sentence enacted in 2016 in HB 83. This proposed amendment is presumably in response to the Supreme Court’s ruling in *State v. Montano*, 2024-NMSC-016, ¶ 21, that “[i]f legislative oversight was the cause of an error or omission in a statute, then it is left for the Legislature, not the courts, to correct the mistake.”

LOPD notes that these crimes are not crimes that require intent to cause the harm and are instead criminally culpable car accidents, so increased incarceration would have no deterrent effect on the behavior. This change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

The EMDA exists to encourage prisoners to participate in authorized prison programs for their rehabilitation, and encourages cooperation with the penal institution since it sets out earlier release as an incentive for good behavior. By reducing the earned meritorious deduction so significantly, from 50% to only 15%; this bill runs the risk of de-incentivizing good behavior and rehabilitation.

Punishment has been one of the preferred methods to address damaging and unwanted behavior. However, decades of empirical work about the effects of punishment (including incarceration and capital punishment) on violent crime actually show that there is no conclusive evidence that stricter punishment deters criminal conduct. The research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished. And it’s not just violent crime. Also, most people and organizations do not have a proper understanding of how the law is enforced, and thus there is a large discrepancy between objective and subjective deterrence, meaning that how the law is enforced in reality is not how it is experienced and understood by norm addressees. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail.

FROM: https://wp.nyu.edu/compliance_enforcement/2021/12/28/the-behavioral-code-four-behavioral-science-insights-for-compliance-and-enforcement/

PERFORMANCE IMPLICATIONS

See Fiscal Implications, above.

ADMINISTRATIVE IMPLICATIONS

See Fiscal Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None evident.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The conduct which is already criminalized will continue to be punished at existing levels, which even with EMDA implements a sentence that is currently greater than the maximum sentence that could have been imposed prior to the 2016 amendment to sentencing.

AMENDMENTS

None known.