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FISCAL IMPACT REPORT

SPONSOR Maestas Barnes ORIGINAL DATE 1/26/2017
LAST UPDATED _____ HB 23

SHORT TITLE Homicide from Reckless Driving Penalties SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$1,477.6	\$2,995.2	\$4,432.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 223.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
Law Office of the Public Defender (LOPD)
New Mexico Corrections Department (NMCD)
Taxation and Revenue Department (TRD)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

HB 23 amends Section 66-8-101(D) NMSA 1978 to increase the penalty for homicide by vehicle while driving recklessly from a third degree felony to a second degree felony pursuant to Section 66-8-113 NMSA 1978.

The LOPD explains a third degree felony (the present level of penalty) carries a sentence of three years imprisonment. A second degree felony (the proposed level of penalty) carries a sentence of nine years of imprisonment.

FISCAL IMPLICATIONS

NMSC states pursuant to Section 33-2-34 NMSA 1978, a judge may determine that the offense of homicide by vehicle is a serious violent offense, based upon the nature of the offense and the

resulting harm. A serious violent offender is required to serve not less than 85 percent of their sentence length. This analysis is based upon the assumption that the offenders earn up to a 50 percent reduction in their sentence length. The NMCD’s FY16 annual cost to incarcerate an offender in a state-run prison is \$44,776. NMSC and LFC analysis estimates the bill could have an additional operating budget impact on the New Mexico Corrections Department of \$1.5 million in the bill’s first year, compounding over time as an average 11 additional people are sentenced under the new statute per year.

Most Serious Prison Admission Charge	Estimated Annual Admissions to NMCD (average of last 4 years)	Estimated Increase of Sentence Length in Years	Cost Per Offender	Estimated Cost of Increase of Sentence
Homicide by Vehicle	11	3.0	\$134,328	\$1,477,608

The Corrections Department explains while the bill will not likely result in an increase in the number of convictions involving a reckless driving resulting in death, those individuals convicted of this crime under this bill if it passes may serve more incarceration time in a NMCD prison, if the person is sentenced to prison time. The bill would not increase the probation term if the offender is placed on probation in lieu of incarceration and also would not increase the parole term (because a two year term applies to second and third degree felonies) if the offender is incarcerated for his crime.

NMCD goes on to state it is important to consider the bill’s impact on potentially deterring criminal activity of previously convicted felons. That is, less direct, more global savings are often overlooked in the fiscal analysis of public safety bills. For example, should the higher penalty imposed for this crime deter reckless driving and increase the public’s sense of safety while reducing crime victimization, a host of savings for our state (ranging from reducing the expenses and impact of crimes upon victims such as loss of social adjustment and future productivity and physical and mental health treatment expenses; reducing the costs associated with specialized victim support and advocacy services, reducing court costs to adjudicate offenders; and reducing the impact of high crime rates upon the State’s economic recovery) might also be realized. Such savings might reasonably offset the more direct and tangible costs of incarceration associated with this bill.

The AOC states that as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. The AOC cannot quantify these costs. 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 enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase.

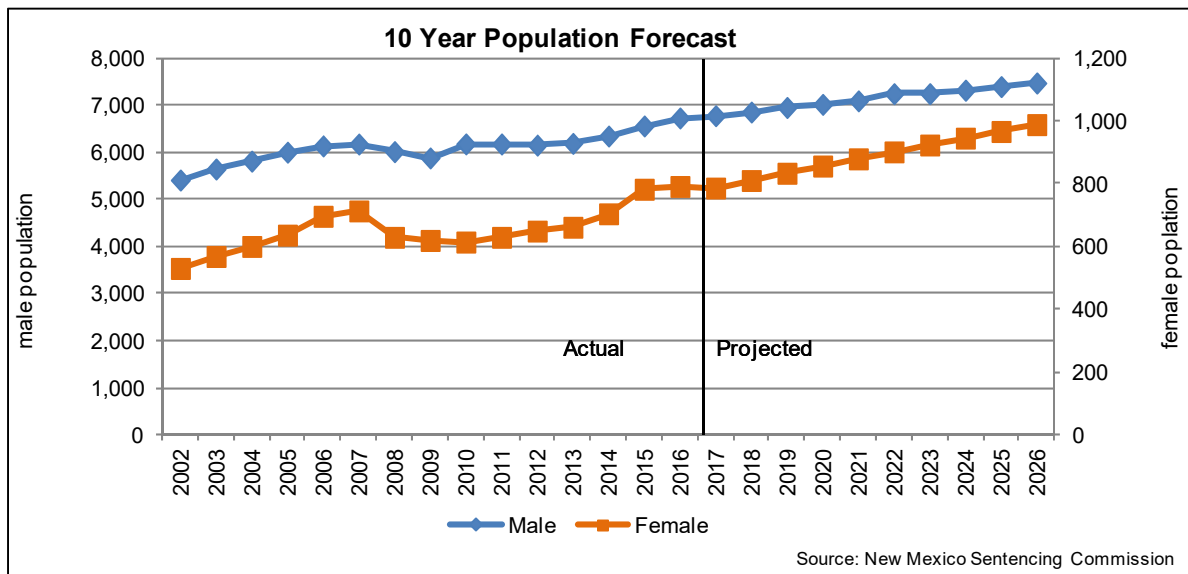
LOPD conflict and overflow contracts cases would cost more to defend higher-penalty felonies on the basis of the level of felony charged. Moreover, higher-penalty cases (while often pled

down) are notably more likely to go to trial. While it is likely that LOPD would be able to absorb some increase in the such higher penalty cases under the proposed law, any increase in LOPD expenditures brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). 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. The Associate Trial Attorney’s mid-point salary including benefits is \$93,376.61. Assessment of the impact on the LOPD upon enactment of this bill would be necessary after the implementation of the proposed higher-penalty scheme.

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. An increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD’s general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate’s needs.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage, losses in future earnings, and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.



SIGNIFICANT ISSUES

AOC explains that HB 23 increases the penalty for a homicide by vehicle while driving recklessly from a third degree felony to a second degree felony. The basic sentence for a second degree felony is nine years imprisonment, as compared to three years imprisonment for a third degree felony. Additionally, the court may impose a maximum fine of \$10,000 for a second degree felony as compared to \$5,000 for a third degree felony. Section 31-18-15 NMSA 1978. Increased penalties may cause more defendants to retain counsel and request jury trials. Indigent offenders are entitled to public defender services.

PERFORMANCE IMPLICATIONS

The AOC is participating in performance-based budgeting. The bill may have an impact on the measures of cases disposed of as a percent of cases filed and percent change in case filings by case type.

While it is likely that LOPD would be able to absorb some increase in the higher penalty cases under the proposed law, the increases proposed are likely to result in a need for additional trial attorneys. There is no way to predict how many vehicular homicides will arise from reckless driving in New Mexico in a given year, so there is no way to predict the number of additional trials possible. Analyst notes that this sort of criminal activity is not especially unusual, so - while assessment of the proposed legislation's deterrent effect, eventual costs and whether additional attorney resources would be needed would have to wait until enactment - it's probable that enactment of this proposed legislation would require additional attorney resources at the District Attorney, Public Defender, and Attorney General in order to meet caseload standards. Additional court resources would also be a likely need.

ALTERNATIVES

The AGO explains because vehicular homicide via either DWI or reckless driving would be similarly classified as second-degree felonies, the language creating the separate charge of vehicular homicide by reckless driving contained in HB 23 paragraph D could be combined with HB 23 paragraph C. This would be similar to the Legislature reclassifying vehicular homicide by DWI as a second-degree felony in the 2016 regular session.

The Legislature could also choose to increase the penalty to a mid-point (six years imprisonment) by declaring the conduct to be a "third degree felony resulting in the death of a human being." See NMSA 1978, § 31-18-15(A)(8). This logical-sounding penalty level could perhaps carry the increased deterrent effect sought while not as greatly increasing the additional required expenditure by DAs, courts, AGs, PD and DOC.

TR/jle/al