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FISCAL IMPACT REPORT

SPONSOR <u>Lord</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/20/23</u>
SHORT TITLE <u>Careless Driving Resulting in Death</u>	BILL NUMBER <u>House Bill 339</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Counties	Indeterminate but minimal	\$173.2	\$173.2	At least \$346.4	Recurring	County General Funds

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of House Bill 339

Under existing law, the penalty for careless driving is a traffic code misdemeanor, punishable by up to 90 days in jail or a \$300 fine or both. House Bill 339 creates a new traffic offense of careless driving resulting in death or great bodily harm of another, which is punishable as a criminal code misdemeanor, subject to up to 364 days in jail or a \$1,000 fine or both. HB339 also includes a definition of “great bodily harm”.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New

Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. HB339 is anticipated to increase the time some offenders spend in jail.

HB339 proposes to create a higher penalty for careless driving resulting in death or great bodily injury, with a sentence of 364 days in jail compared with 90 days in jail for careless driving not resulting in death or great bodily injury. Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could result in estimated increased costs of \$14.4 thousand to counties.

The Sentencing Commission reports a total of 413 individuals were arrested for careless driving in FY22. Assuming a conviction rate of 27 percent, this analysis estimates about 112 of these people were admitted to jail for this offense. The U.S. Department of Transportation's National Highway Transportation Safety Administration reports 1 percent of 2020 police-reported motor vehicle crashes resulted in fatalities, while 30 percent resulted in injury. Assuming about one-third of crashes resulting in injury resulted in what could be considered great bodily injury, this analysis estimates 11 percent of crashes, and 11 percent of current careless driving arrests and convictions, would fall under the provisions of HB339. Overall, this results in an estimated 12 people being admitted to jail each year whose sentences will be increased by the provisions of HB339, a total cost of \$173.2 thousand per year to counties. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY25; however, a minimal cost may apply in FY24 for individuals who are detained for some period of time prior to adjudication.

This analysis does not include potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

In addition, AOC reports 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 resources to handle the increase. Further, it notes that the increase in penalty in HB339 could lead to more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Indigent offenders are entitled to public defender services. There may also be an increase in appeals.

SIGNIFICANT ISSUES

Existing law provides a misdemeanor penalty for careless driving, consisting of a fine of up to \$300 or by imprisonment of up to 90 days, or both. See Section 66-8-114(B) and Section 66-8-7 NMSA 1978. HB339's new Subsection C provides a misdemeanor penalty for careless driving that results in death or great bodily harm of another, consisting of a definite term of imprisonment of less than one year or the payment of a fine of not more than \$1,000 or both. See Section 31-19-1 NMSA 1978.

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful to community safety. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team has found in the 2nd Judicial District (Bernalillo County) that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and when felonies rose in 2020, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.

OTHER SUBSTANTIVE ISSUES

NMAG provides this advice concerning the new offense of careless driving resulting in death or great bodily harm that is created in HB399:

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.

Although HB339 does not propose to impose felony punishment for careless driving resulting in death or great bodily harm, issues could arise if felony homicide charges are premised on a violation of the amended Section 66-8-114, as nothing in the proposed amendment appears to overcome the Supreme Court's reasoning in *Yarborough*.