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## F I S C A L   I M P A C T   R E P O R T

Torraco	ORIGINAL DATE LAST UPDATED	3/3/15	HB
SHORT TITLE	Increase Some Careless Driving Penalties	SB	651
		ANALYST	A. Sánchez

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

Administrative Office of the District Attorneys (AODA)

Taxation and Revenue Department (TRD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 651 adds a misdemeanor offense for careless driving resulting in death or great bodily harm to the Motor Vehicle Code, provides for punishment pursuant to Section 31-19-1, and makes a traffic offense a violation of a person's condition of probation. The bill also defines great bodily harm. The effective date of the bill is July 1, 2015.

### FISCAL IMPLICATIONS

According to the PDD, this bill is unlikely to change the *number* of cases in which the PDD enters an appearance, it could significantly alter the complexity of the litigation and require more time and resources since the cases would be more likely to go to trials, more likely to require experts, such as crash reconstructionists, and involve a full year of incarceration.

The AOC reports that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

The AODA states that expert witness testimony will be required to prove death or great bodily

injury resulted from careless driving. Experts from multiple disciplines will add to the cost of prosecution. In addition to the cost of the experts, those cases will need to be prosecuted and defended by more experienced assistant district attorneys and defense attorneys. The increased penalties will also mean that the defendants in these cases will be entitled to jury trials even though the offense is a misdemeanor, also adding to the overall cost.

## **SIGNIFICANT ISSUES**

PDD cites the Supreme Court's recent *Consaul* decision, which represents the Court's rejection of criminal liability for civilly negligent behavior in the child abuse context. As the Court recognizes, the distinctions between civil and criminal systems must be maintained, lest every perceived injury give rise to criminal liability and the burdens on the State that inherently accompany prosecution and punishment. See *State v. Consaul*, 2014-NMSC-030, 332 P.3d 850 (holding that criminal negligence and civil negligence are not equivalent and civil negligence should not incur criminal punishment).

According to AODA, SB 651 would increase the penalty for careless driving from a maximum of 90 days imprisonment and/or \$300 fine, to 364 days imprisonment and/or \$1,000 fine if the violation results in the death or great bodily injury to another person. Careless driving has been interpreted as driving while not paying enough attention under the circumstances, which is the same standard as civil negligence. See, *State v. Baldonado*, 92 N.M. 272 (Ct. App. 1978) cert. den. 1978). New Mexico has always required a criminal negligence standard, that is—a reckless, willful or wanton disregard for safety—in order to punish someone with a felony crime for death or great bodily injury. See, *State v. Yarborough*, 122 N.M. 596 (1996) and cases cited therein. The bill would not create a felony but would significantly increase the penalty for careless driving if that type of conduct resulted in death or great bodily injury to another person. Instead of the punishment prescribed for a Motor Vehicle Code misdemeanor for careless driving (See, Sect. 66-8-7, NMSA 1978), if death or great bodily injury resulted the punishment could be the same as the penalties for a misdemeanor in the Criminal Code, even though the offense involved only ordinary negligence. The legislature has the authority to make negligent conduct a crime. See, *Santillanes v. State*, 115 N.M 215 (1992).

AODA continues that SB 651 provides that probation shall be two years if the sentence for careless driving resulting in death or great bodily injury is suspended in whole or deferred. By comparison a sentence for driving while intoxicated (“DWI”) may extend beyond the prescribed statutory maximum if the DWI sentence is suspended in whole or in part or deferred. See, Sect. 66-8-102(E) and (F), NMSA 1978.

## **PERFORMANCE IMPLICATIONS**

This bill may impact the courts' performance based budgeting measures, which may result in a need for additional resources. For example, the magistrate court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

## **TECHNICAL ISSUES**

AOC points out the following:

- 1) Section 66-8-7(B) NMSA 1978 allows for the imposition of a specified misdemeanor penalty other than that set out in Section 66-8-7 NMSA 1978, for a misdemeanor violation of a provision of the Motor Vehicle Code.
- 2) Section 66-8-101 NMSA 1978 governs the crimes of homicide by vehicle and great bodily harm by vehicle. An argument can be made that careless driving constitutes “the unlawful operation of a motor vehicle” and therefore could lead to a conviction of vehicular homicide.

## **OTHER SUBSTANTIVE ISSUES**

PDD opines that this bill would criminalize your average car accident where harm results, but sometimes car accidents are just accidents, even if a driver is at fault (due to a moment's distraction while driving not amounting to recklessness). Great bodily harm can include notably temporary injuries, such as a broken arm, for which the at-fault driver would be facing up to a year in jail. Section 66-8-101 provides for third-degree felony penalty for great bodily harm or death resulting from *reckless* driving. This is the lowest mental state of culpability for which criminal liability should be imposed. If there was not any recklessness, our civil system is the appropriate recourse to address the harm and recoup damages, just as regular car accidents with injuries have been litigated and resolved for decades.

AODA states that the bill varies the definition of great bodily injury used in the Criminal Code and for the homicide or great bodily harm by vehicle statutes without explaining why. Cf., Sect. 30-1-12(A) NMSA 1978. (“ ‘(G)reat bodily harm’ means an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.”) and SB 651, Section D. (“ ‘(G)reat bodily harm’ means an injury to a person that creates a high probability of death; that causes serious disfigurement; or that results in permanent or protracted loss or permanent impairment of the function of any member or organ of the body.”) By requiring the impairment to the function of any member or organ of the body be permanent, instead of permanent or protracted like the Criminal Code, the bill might not apply to someone who, for example, might have sustained a broken leg that required surgery and crutches for several months but would ultimately recover function and not be permanently impaired, so the increased penalties would not be applicable. Proving death or great bodily harm resulted from careless driving will require testimony by experts. Physicians or other health care experts will be needed to testify that the injury or death was caused by the careless driving acts of another person and the expected duration of the loss or impairment of the function of any member or organ of the body if the case involves injury and not death. Experts might also be needed to testify that the motor vehicle wreck was caused by factors other than not paying enough attention under the circumstances. For example, persons might claim there were factors like road conditions, mechanical failure, or some other intervening cause (like other motorists, animals on the roadway, etc.) that caused a vehicle crash that resulted in death or great bodily injury. By adding to the proof required to impose the increased penalties more careless driving cases will need to be prosecuted by assistant district attorneys instead of law enforcement officers, will need to be defended by licensed attorneys instead of defendants proceeding *pro se*, and trials will take longer and will be eligible to be decided by juries.