

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

SPONSOR Park DATE TYPED 02/09/04 HB 489

SHORT TITLE Penalties For Crimes Involving Vehicles SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

Duplicates SB0447

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Attorney General's Office (AGO)  
 Sentencing Commission (SC)  
 Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

House Bill 489 changes existing law as follows:

- increases penalties for persons who are convicted of driving under the influence of alcohol, drugs or driving recklessly, and who injure victims from a third degree felony up to a possible first degree felony (if the victim is a child);
- creates a new category of injury (harm which is less than great bodily harm) for victims who are injured by persons convicted under this section;
- creates a new category of victims (children), for which there are increased penalties;
- provides increased penalties when an offender kills or injures someone while evading an officer, from a third degree felony up to a first degree felony (if the victim is a child), and
- includes convictions in Tribal Court for purposes of enhancement.

Significant Issues

**The Attorney General Office has provided the following:**

The significant issues are the increased penalties for persons convicted under this section.

- If you kill or seriously injure a child while driving under the influence of alcohol, drugs or while driving recklessly, a person could be convicted of a first degree felony which carries a mandatory sentence of 18 years in prison. Currently, there is no distinction between children and adults in the statutory scheme of this section. The additional exposure will go from six years to eighteen years, a difference of twelve years.
- If you kill or seriously injure an adult while driving under the influence of alcohol or drugs or while driving recklessly, the penalty under this bill is a second degree felony which carries a basic sentence of nine years in prison. Currently the penalty for this offense is a third degree felony involving death which carries a basic sentence of six years. The additional exposure will go from six years to nine years, a difference of three years.
- If you harm an adult or a child, but do not seriously harm an adult or child while driving under the influence of alcohol or drugs or while driving recklessly, then the penalty under this bill is a third degree felony, which carries a basic sentence of three years. Currently, there is no offense in the statutory scheme for this last scenario involving a less than serious injury. This portion of the bill is completely new category of injury.

The bill will increase penalties for persons who kill or injure victims while fleeing or evading a police officer. The bill makes it a first degree felony for a person to kill or seriously injure a child while Resisting, Evading or Obstructing an Officer. The penalty for this crime will be a mandatory eighteen years in prison.

- If an adult is killed or seriously injured by an offender fleeing or evading a police officer, the penalty is a second degree felony with a basic sentence of nine years. If an adult or child is harmed, but not seriously harmed by an offender while fleeing or evading a police officer, the penalty is a third degree felony with a basic sentence of three years. Currently, there is no law which directly addresses these situations.
- Currently, if an offender were to flee an officer and kill an adult, he could be charged with depraved mind murder if the conduct was egregious indicating a “depraved mind”; this is a high standard and is difficult to prove. Depraved Mind murder is a first degree felony with a basic sentence of eighteen years.
- If the conduct does not rise to the level of a “depraved mind”, the offender could be charged with voluntary manslaughter which is a fourth degree felony with a basic sentence of eighteen months.
- Currently, if an offender kills or seriously injures a child while fleeing a police officer, he could be charged with child abuse resulting in death or great bodily harm depending on the particular circumstances which is first degree felony with a basic sentence of 18 years. If the circumstances don’t allow, then voluntary manslaughter could be charged which is a fourth degree felony with a basic sentence of 18 months.
- Currently, if an offender seriously injures an adult victim while fleeing a police officer he could be charged with Aggravated Battery. Aggravated Battery is a third degree felony with a basic sentence of three years. However, this is a difficult charge to prove because of the specific intent requirement that the offender must intend to injure the victim.

The bill fills gaps in the law which do not now exist and appears to seek a middle ground between extremes in punishment that currently may occur.

**The Sentencing Commission provides the following:**

The SC has completed an extensive DWI overview report in February 2003, A Snapshot Report of National and International DWI Programs and Sanctions. They have provided the following:

- Longer DWI sentences alone have little or no effect on the behavior of individuals or on the number of DWI accidents, injuries or recidivism.
- Only a combination of sanctions and treatment seems to have a noticeable effect on preventing DWI repeat offenders from recidivating.

Dedicated detention facilities, ignition interlock sanctions, vehicle/license plate sanctions, probation sanctions and treatment programs are some of the approaches other states have taken to reduce DWI recidivism.

- Increasing the jail sentence for someone who has already done the great harms listed in this bill sends a message that the State takes such acts seriously. It will keep that person from driving under the influence only as long as he is incarcerated. However, studies show that DWI offenders who spend long terms in jail are as, or even more likely, to commit DWI again upon release.

**Corrections Department**

There are two significant issues to the Corrections Department. First, the increase penalties should act as a powerful deterrent, both general and specific, to reduce the number of incidents of DWI in New Mexico. On the other hand, because of the new mandatory prison sentences for the new first degree felony and for offenders with prior DWI convictions, as well as the longer sentences generally, even though prison time is not mandatory, the bill could result in cost increases to the Department. Depending on the general deterrent effect, the bill could result in an increase in prison population as well as probation and parole caseloads.

**FISCAL IMPLICATIONS**

The AOC notes as penalties increase, potential imprisonment tends to inspire defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

The CD has provided the following:

New laws have created new mandatory prison sentences and longer sentences generally so the bill will probably result in cost increases to the CD. It is difficult to estimate how significant the cost increases will be because the bill will probably have some deterrent effect and thereby reduce the number of these offenses. Currently, the Department has 119 inmates in the prison system who are serving a sentence for vehicular homicide or great bodily injury by vehicle.

The contract or private prison annual costs of incarcerating an inmate based upon Fiscal Year 2003 actual expenditures is \$20,720 per year for males. The cost per client to house a female inmate at a privately operated facility is \$26,313 per year. Because state owned prisons are

essentially at capacity, any net increase in inmate population will be housed at a contracto or private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,452 per year. The cost per client in Intensive Supervision programs is \$2,852 per year. The cost per client in department-operated Community Corrections programs is \$4,371 per year. The cost per client in privately-operated Community Corrections programs is \$9,151 per year. The cost per year for male and female residential Community Corrections programs is \$20,725.

The bill could also result in a minimal increase in general fund revenue because the higher felony levels allow the courts to impose higher fines for the offense.

### **ADMINISTRATIVE IMPLICATIONS**

There is an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

If the bill results in a larger prison population or higher probation and parole caseloads, it will increase the administrative burden on prison personnel, probation and parole personnel and administrative support staff to operate the larger programs.

Any significant deterrent affect would mitigate the increase in the administrative burden.

### **TECHNICAL ISSUES**

This bill does not define “child” in terms of age. The New Mexico Criminal Code contains several definitions of child in the context of each particular section. For example “under the age of 18” for alcohol consumption, and Contributing to the Delinquency of a Minor. Sexual Exploitation of Children contains definitions of children of 13 and 16 years of age depending on the circumstances of the offense.

**DW/yr**