

LFC Requester:	
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**AGENCY BILL ANALYSIS
2026 REGULAR SESSION**

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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 Jan. 29, 2026
Bill No: HB 162-280

Sponsor: Art De La Cruz & Meredith Dixon
Short Title: Motor Vehicle Crimes & Penalties

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
	\$250	Non-recurring	General

(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	-	-	\$294.0	\$294.0	Recurring	General Fund

(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:

Existing Law: As context for this bill, current law has two traffic offenses at issue: careless driving, NMSA 1978, § 66-8-114, which penalizes inattentive driving as a traffic misdemeanor (up to 90 days in jail); and reckless driving, NMSA 1978, § 66-8-113, which penalizes driving “carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.”

Meanwhile, NMSA 1978, § 66-8-101 defines homicide or great bodily harm by vehicle. Before 2016, that statute provided for one third-degree felony crime for death or great bodily harm caused by *either* driving while intoxicated (“DWI”) *or* driving recklessly (contrary to Section 66-8-113). In 2016, the Legislature created tiered penalties, punishing great bodily harm by DWI or reckless driving as a third-degree felony; death caused by reckless driving as a third-degree felony; and increased the penalty for death caused by DWI to a *second* degree felony. Since at least 1991, the statute has contained a sentencing enhancement for any DWI-based conviction to be enhanced by “four years for each prior DWI conviction” within the past 10 years.

HB 162: HB 162 would amend Section 66-8-101 to add a *negligent* version of homicide by vehicle and increase existing penalties.

First, the bill would increase reckless homicide by vehicle from a third to a second-degree felony, leveling the penalty to the same as conduct committed while DWI.

Second, the bill would add a new Subsection (I) defining the crime of “negligent homicide by vehicle” as “the killing of a human being by a motor vehicle while violating Section 66-8-114 NMSA 1978” (careless driving). It would set the penalty for this new crime as a fourth degree felony (an 18-month basic sentence).

The bill would appropriate \$250,000 to DOT for fiscal year 2027 to launch a “statewide education campaign regarding careless driving and reckless driving,” presumably for prevention purposes.

FISCAL IMPLICATIONS

Increasing the penalty for reckless homicide by vehicle is likely to place undue plea bargaining power in the hands of prosecutors in cases where fault may be debatable, while simultaneously forcing other cases to trial when defendants are hoping to avoid a lengthy prison sentence.

With the creation of a new crime, it can be difficult to predict how often prosecutors will pursue charges, insofar as no statistics exist to suggest how much the previously legal behavior presently occurs. However, this bill essentially expands the scope of criminal liability to *any and all motor vehicle accident fatalities* since one or more drivers will always be found at fault under a civil negligence standard, *see Significant Issues*.

Thus, LOPD would anticipate a dramatic increase in felony prosecutions arising from accident fatalities that currently do not rise to the level of “reckless driving.” However, because this is the kind of negligence that tragically occurs every day to ordinary, otherwise law-abiding citizens, it is difficult to predict how many of the defendants would qualify for LOPD representation.

Costs of increasing reckless homicide by vehicle from a third to a second-degree felony. The workload difference between defending reckless homicide by vehicle as a second- rather than third-degree felony is minimal, but higher penalties are more likely to try or involve more elaborate plea negotiations, which does modestly increase demand on attorney time. LOPD estimates the penalty increase provision would increase the defense cost by about \$23.4 thousand per case.

Costs of negligent homicide by vehicle. In 2025, LOPD represented 235 misdemeanor cases of careless driving under 66-08-114. According to the Workload Study LOPD published in 2022, a traffic case takes about 8 hours to represent. If those just 5 percent, or 12, of those 235 cases were treated as a fourth degree felony, the additional cost could be as much as \$270 thousand per year, excluding the costs of experts and support staff. Contract attorneys are paid a base rate of \$540 for fourth degree felonies, but may qualify for complex case litigation costs at \$85/hour depending on the details of the case.

In total, this bill could cost LOPD an additional \$294 thousand per year.

Nevertheless, indigent criminal defense is a constitutionally mandated right, and LOPD does not control the decision to charge or the number of resultant cases assigned to the agency. All that can be said at this time is that if more charges, case assignments and trials result, LOPD may need to hire more attorneys and staff. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme. This is particularly true for non-DWI homicide by vehicle, which often involves reliance on crash reconstruction experts and vehicle black box data, which may increase the demand for defense expert witnesses to evaluate the State’s evidence of fault.

SIGNIFICANT ISSUES

New Mexico already criminalizes vehicular homicide committed by *reckless* driving. NMSA 1978, § 66-8-101, and punishes it as a third-degree felony. This bill proposes to increase that penalty to a second-degree felony, treating it with equal culpability to traffic fatalities caused by DWI. Analyst notes that the 2016 amendment increasing DWI homicide by vehicle to a

second-degree felony was done specifically to recognize the greater culpability of drunk drivers.

While the Legislature may now have a different policy view on the matter, Analyst notes that there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections, and not any beneficial impact on public safety.

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

Accordingly, the appropriation for a public awareness campaign is much more likely to deter careless and reckless driving than any possible penalty increase for the existing reckless driving version of homicide by vehicle.

Meanwhile, the addition of a negligent homicide crime is deeply troubling. Careless driving represents mere negligence, the lowest mental culpability outside of strict liability. If a car accident results in death and a person was not driving recklessly—a higher level of mental culpability often described as “criminal negligence”—they should not be criminally liable for the death. Those unfortunate car accidents are remedied by civil tort law, which is properly designed to account for contributory negligence, joint and several liability when multiple drivers were involved, and calculating and apportioning of actual monetary damages.

The criminal system is not designed to make families feel whole or to “remedy” a wrongful death. It serves to punish and deter culpable conduct. Although this bill proposes a misdemeanor crime rather than a felony, careless driving resulting in death simply is not criminal at its core.

There is a longstanding legal principle in New Mexico that “negligence” in felony cases means “criminal negligence” rather than ordinary or civil negligence. See *Santillanes v. State*, 1993-NMSC-012, ¶ 13, 115 N.M. 215, 849 P.2d 358; *Yarborough*, 1996-NMSC-068, ¶¶ 18-20. Criminal negligence “includes the concept of recklessness.” *Henley*, 2010-NMSC-039, ¶ 16. “[A]n injury caused by mere negligence, not amounting to a reckless, willful and wanton disregard of consequences, cannot be made the basis of a criminal action.” *Yarborough*, 1996-NMSC-068, ¶ 12 (quoting *State v. Harris*, 1937-NMSC-046, ¶ 6, 41 N.M. 426, 70 P.2d 757).

For this reason, in the 1990s, the Supreme Court described criminal negligence as requiring “proof that the defendant *knew or should have known* of the danger involved and acted with a reckless disregard for the safety or health” of the victim. *Santillanes*, 1993-NMSC-012, ¶ 29 (emphasis added).

For involuntary manslaughter, criminal negligence “requires subjective knowledge by the defendant of the danger or risk to others posed by his or her actions.” *Henley*, 2010-NMSC-039, ¶ 17. The Supreme Court has rejected the “should have known” standard in the context of other crimes as well. In *Mascareñas*, 2000-NMSC-017, ¶ 13, the Supreme Court found fundamental error in a child abuse case in which the jury was instructed on a “knew or should have known” standard, calling it “language typically associated with a civil negligence standard.” In a murder case, the Supreme Court held that “should have known” was “essentially a civil negligence standard.” *Suazo*, 2017-NMSC-011, ¶ 23. In another child abuse case, the Supreme Court expressed concern “over continued use of the phrase ‘knew or should have known’ in our jury instructions because of its close association with principles of civil negligence and ordinary care.” *State v. Consaul*, 2014-NMSC-030, ¶ 38, 332 P.3d 850. The Court “regret[ted] [its] use of that phrase many years ago in *Santillanes*” and was “doubtful about the continued vitality of ‘knew or should have known’ in our instructions.” *Id.* ¶¶ 38, 40. After *Consaul*, the Supreme Court adopted new uniform jury instructions for child abuse that eliminated the phrase “knew or should have known.” *See, e.g.*, UJI 14-612 NMRA; UJI 14-615 NMRA; UJI 14-621 NMRA (use note 6 in each).

Unlike reckless driving, which requires “willful disregard” (incorporating a subjective knowledge requirement), careless driving requires only that a person was distracted and missed a visual cue, not that they were affirmatively doing some secondary driving behavior that was reckless (such as speeding in a low visibility area, texting while driving, racing another car, making an unlawful u-turn, etc.). The law draws a line between the two for felony (and particularly homicide) purposes for the reasons outlined above. Inability to prosecute a careless death is not a gap in the law; it maintains the critical distinction between criminal and civil liability. Tort law is designed to make victims whole; criminal law is not.

PERFORMANCE IMPLICATIONS

As noted in **Fiscal Implications**.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill and analyst is unaware that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

To the extent this bill seeks to address the heightened culpability of a repeat careless driver who eventually ends up in a fatal crash, an alternative approach would be to amend § 66-8-114 (careless driving) to provide that a third or subsequent conviction elevates it to reckless driving, thus triggering liability under the existing homicide by vehicle statute. This would be a sensible pronouncement since the two prior careless driving citations provide objective proof that continued “inattentive, imprudent” is now being committed with notice of the illegality and dangerousness, thus rising to the level of “willful disregard” for the safety of others.

As Analyst understands the underlying public safety concern, the bill is at least partly designed to address an increased prevalence in “street racing” conduct resulting in fatalities. Thus another alternative to “negligent homicide by vehicle” would be to amend § 66-8-115 “Racing on highways” to add a provision indicating that second offense Racing constitutes reckless driving to ensure that anyone with a prior racing citation who causes a traffic fatality while racing would be subject to the existing reckless homicide provisions in 66-8-101.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS