

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 be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/10

SPONSOR Egolf LAST UPDATED \_\_\_\_\_ HB 65

SHORT TITLE Increase Certain Vehicular Homicide Penalties SB \_\_\_\_\_

ANALYST Wilson

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

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$1.0- \$200.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Attorney General's Office (AGO)  
 Department of Transportation (DOT)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 65 increases the sentence enhancement from four years to six years for any person who is convicted of homicide by vehicle or great bodily harm by vehicle and who has a prior DWI conviction occurring within the previous ten years. Such person shall have his basic sentence enhanced by six years for each such prior DWI conviction.

The bill also raises the commission of homicide by vehicle from a third degree felony to a second degree felony resulting in the death of a human being, which carries a 15 year basic sentence when the person who commits the crime has a .16 or higher blood or breath alcohol concentration within three hours of driving the vehicle. If the person convicted under this section also has a prior DWI conviction, the bill enhances the basic sentence by six years for each prior DWI conviction incurred within ten years of the criminal act.

## FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to any changes in the enforcement of this law as a result of the amendments, and subsequent commenced prosecutions. Amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The AOC notes as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials will require additional judge time, courtroom staff time, court room availability and jury fees. These additional costs cannot be quantified.

## SIGNIFICANT ISSUES

The PDD provided the following:

The Vehicular Homicide statute provides serious criminal penalties to an act with minimal intent when awful consequences result. Increasing the effectiveness of enforcement of this statute is a laudable goal.

However, Vehicular Homicide by DWI requires only the criminal intent to drive drunk. This bill will increase the penalty for Vehicular Homicide by Aggravated DWI to a second degree felony resulting in the death of a human being – fifteen years: this is presently the penalty for second degree murder. Historically, of course, second degree murder requires the intent to kill with either sufficient provocation or intent to do acts that will create a strong probability of death or great bodily harm.

Vehicular Homicide by DWI already approaches the level of strict liability. A drunk driver who kills someone is guilty of the offense unless the defendant can demonstrate that the death was not a foreseeable result of the defendant's act and the defendant's act was not a significant cause of the death – even if there was contributory negligence by the victim or another party. HB 65 will allow a second degree murder level of punishment for a crime with one of the most minimal intent requirements. When moral condemnation and social opprobrium attach to the convictions of a crime, the crime should typically reflect a mental state warranting such contempt

Of additional concern is whether NMSA 1978, § 66-8-120, Parties to a Crime could support a fifteen-year sentence of a mere passenger under such a modified statute; recent news stories stemming from a high-profile Santa Fe case indicate that such prosecutions are attempted.

The Court of Appeals has found that the mental state required for vehicular homicide, conscious wrongdoing requires only that a defendant purposefully engage in an unlawful act. The Court also found that aiding and abetting in this context does not require physical control over the vehicle. The Court concluded that defendant's presence in the vehicle, his purchase of additional alcohol, his statements after the accident, his partnership before the accident, his knowledge of driver's intoxication, and driver's decision to drive following defendant's encouragement are all factors of the shared intent of conscious wrongdoing. The Court of Appeals affirmed the defendant's conviction.

This case however is pending before the Supreme Court on a Writ of Certiorari, and so its continued validity may be called into question.

Further, the Vehicular Homicide by Aggravated DWI provisions will allow killings under this minimal intent requirement to be punished far more severely than killings that happened with a much more heinous intent by the offender, during an intentional reckless evasion of law enforcement. Under present Section 66-8-101(F), such a killing is only a third degree felony. Public policy will seem to argue against such a result.

### **ADMINISTRATIVE IMPLICATIONS**

The affected agencies will be required to handle the provisions of this bill with existing staff as part of ongoing responsibilities.

The PDD states that Although already operating close to the red line, Public Defender Department, DAs, courts, appellate and trial, and AGs will be notably impacted by the enactment of such legislations. More trials and appeals will inevitably follow such an increase in penalty. Some Public Defender Department attorneys are already being presented with caseloads in excess ABA guidelines; enactment of the proposed legislation will make the situation worse.

### **TECHNICAL ISSUES**

The AGO suggests the six-year sentence enhancement provided for in Subsection E could be incorporated in Subsection D which already provides for a six-year sentence enhancement for prior DWI convictions when convicted of homicide by vehicle and great bodily harm by vehicle. Subsection D will need to be amended to include convictions “as provided in Subsection E of this Section.”

### **OTHER SUBSTANTIVE ISSUES**

The AODA believes passage of this bill will result in safer streets as fewer drunk drivers will be out in the community. The enhancement provisions for those with prior DWIs will assist in keeping those with significant alcohol problems who still drink and drive from being a threat to the community unless drunk drivers continue to receive probation only and continue to drive.

DW/svb