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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11

SPONSOR Park LAST UPDATED 03/02/11 HB 325

SHORT TITLE Make DWI Death a Serious Violent Felony SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$50.0	\$50.0	\$100.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 306, SB 307, SB 308, SB 387, SB 405, SB509, HB 49, HB 183, HB 263, HB 329, HB 330, HB 357 & HB 392

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Corrections Department (CD)
 Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

House Bill 325 adds vehicular homicide (DWI) and great bodily harm by vehicle based on a DWI to the list of serious violent offenses in 33-2-34 which addresses the earning of meritorious deductions in prison. These crimes are currently listed as crimes which, within the discretion of the court, can be considered serious violent offenses.

This bill removes the discretion of the court and makes them part of the list as defined as serious violent offenses. The good time earned will change from a possible maximum of 30 days per month to 4 days per month.

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 the

enforcement of this law and commenced prosecutions. 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. It is possible that because of the change proposed in the bill, there could be more trials for vehicular homicide and great bodily harm by vehicle cases. The cost at this time is unknown.

By reducing the number of days a prisoner can earn meritorious deductions from 30 days to four days per month will greatly lengthen the time an offender serves in prison for the above crimes. The longer that an offender must stay in prison, the more crowded our prisons will become, thus possibly making it necessary to build additional facilities.

CD currently has 35 offenders in its prisons convicted of homicide by vehicle or great bodily harm by vehicle under the influence of alcohol or drugs. While these offenders will not be subject to this bill if it passes, all such offenders entering prison after the passage of the bill would have to serve approximately 85% of their sentences. CD estimates that the bill will increase its incarceration costs by at least \$100,000 over the relevant three year period. This is just an estimate. It could be high or low. CD cannot control who is convicted and sentenced to its custody. The increased incarceration costs are likely to be higher in the next three year period. Inmates serving longer sentences will eventually increase CD's inmate population to its rated or maximum capacity. There is no appropriation in the bill to cover these increased incarceration costs.

CD estimates that the provisions of this bill will add \$100,000 to costs in the next three years and after that the costs will be even higher.

SIGNIFICANT ISSUES

The SC provided the following:

Currently, the offense of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs is included in the list of offenses that may be deemed a serious violent offense when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense.

HB 325 will require a person who commits that offense to serve not less than 85% of the offender's sentence. Consequently, judicial discretion will be removed with regard to this particular offense and the availability of earned meritorious deductions from a sentence.

The bill makes homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs a *per se* or automatic serious violent offense. This means that offenders convicted of this crime are only eligible to earn up to four days of good time per month, as opposed to up to 30 days per month for crimes which are not listed or defined as serious violent offenses. The homicide by vehicle crime is a third degree felony carrying a six year prison sentence, meaning that the offender will serve over five years or 85% of his sentence earning only four days of good time per month, instead of serving only approximately three years or 50% of his sentence earning 30 days of good time per month. Similarly, the great bodily harm by vehicle crime is a third degree felony carrying a three year prison sentence, meaning that as a serious violent offense the offender will serve about 85% of the three years instead of

only half of the three year sentence.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned or operated prison to \$31,239 per year in a contract/private prison where primarily only level III or medium custody inmates are housed. The cost to house a female inmate at a privately owned or operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract or private facility.

If numerous new crime or serious violent offense bills such as this one are passed, CD will eventually reach its rated capacity for its prison population. At that point, the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. The early release of inmates jeopardizes public safety, and housing inmates out of state or building new prisons is expensive.

ADMINISTRATIVE IMPLICATIONS

Since the bill is likely to result in substantial increases in the CD prison population, it will increase the workloads of current prison staff.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 325 relates to the following DWI bills:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 306, Home Breathalyzer for Certain DWI Offenders
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 308, Interlock Regulations for DWI Offenders
- SB 387, Chemical Tests with Probable Cause of DWI
- SB 405, DWI and Drug Standards Clarification
- SB 509, No Car Interlock for Certain Convictions
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 183, DWI First Offender Follow-Up Program
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases
- HB 329, Consistent Felony DWI Convictions
- HB 330, Penalty Increase for DWI Offenders
- HB 357, Homicide by Boat & Great Bodily Harm by Boat

DW/svb:mew