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## FISCAL IMPACT REPORT

**ORIGINAL DATE**  
**LAST UPDATED** 02/02/12 **HB** 12

**SPONSOR** Miera

**SHORT TITLE** Increase Penalty for Vehicular Crimes **SB** \_\_\_\_\_

**ANALYST** Daly

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Minimal*	Minimal*	Minimal*	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*See Fiscal Implications.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorney (AODA)  
 Attorney General’s Office (AGO)  
 Taxation & Revenue Department (TRD)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 12 proposes to add an increased penalty upon conviction of careless driving that results in death or “great bodily harm” to another person. Great bodily harm means an injury that creates a high probability of death, causes serious disfigurement or results in permanent loss or impairment of the function of any member or organ of the body. This offense constitutes a misdemeanor and is punishable by a term of imprisonment for up to one year and/or a fine of not more than \$1,000.

The effective date of this bill is July 1, 2012.

### FISCAL IMPLICATIONS

The AODA anticipates an increase in the number of jury trials at the magistrate and district court levels, given the significant increase in the term of incarceration. Such an increase would impact the courts, as noted by the AOC, and the Public Defender as well. The AODA also reports that

the number of careless driving incidents resulting in death or great bodily harm is not insignificant. The NMCD notes that misdemeanants normally serve their sentences in county jails, NMCD does not typically supervise these offenders on probation, and misdemeanants are not subject to parole. If, as rarely happens, offenders are sentenced to serve two or more misdemeanor convictions consecutively, then NMCD would be responsible for their incarceration. Any of these factors would have some impact, but that impact is estimated to be minimal, as indicated in the table above.

## **SIGNIFICANT ISSUES**

The existing traffic misdemeanor of careless driving is punishable by a fine or not more than \$300 and/or imprisonment of not more than 90 days. That misdemeanor continues under this bill, and the more severe penalty of up to one year in county jail would apply to the newly created offense of careless driving resulting in death or great bodily harm.

The new misdemeanor appears to encompass accidents resulting in death or great bodily harm caused by cell phone usage and texting. It is estimated that at least 28% of all traffic crashes (at least 1.6 million crashes each year) are caused by drivers using cell phones and texting. The National Safety Council estimated in 2010 that 1.4 million crashes each year are caused by drivers using cell phones and a minimum of 200,000 additional crashes each year are caused by drivers who are texting.

The AODA advises:

“Homicide by vehicle is the killing of a human being in the unlawful operation of a motor vehicle”. Although it has been argued that careless driving constitutes “the unlawful operation of a motor vehicle” and therefore could lead to a conviction of vehicular homicide, both this argument and one based on involuntary manslaughter have failed in our appellate courts. This bill makes it clear that careless driving can in fact be the method of causing a vehicular homicide and it delineates a specific penalty. Any convictions may yet be challenged through the appellate process should this bill pass, on theory that mere carelessness does not justify criminal punishment, as punishment is designed to prevent intentional or negligent conduct.

## **TECHNICAL ISSUES**

The AGO points out that the definition of great bodily harm in HB 12 is slightly different than that provided in the definition of the same term in the criminal code. HB 12 requires that the great bodily harm result in permanent loss or impairment, while the criminal code definition (in section 30-1-12(A)) includes both protracted as well as permanent loss or impairment. The legislature may want to consider applying the criminal code definition in this bill.

MD/lj