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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 87

SHORT TITLE Additional Serious Violent Felonies SB \_\_\_\_\_

ANALYST Sánchez

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$16.9*	\$77.6*	\$94.5	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

**\* Amount is dependent on the number of individuals convicted of a fourth DWI. The amount shown in FY13 represents six months of incarceration for one person. Greater impact will start in FY14, which like the amount shown in FY13 represents conviction of one person each for a fifth, sixth and seventh DWI.**

Duplicates HB150, Relates to HB43 and HB44

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 New Mexico Sentencing Commission (NMSC)  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 87 amends the Earned Meritorious Deductions (“Good Time”) Law to clarify those offenders serving life sentences without the possibility of parole or release cannot earn good time. It further amends this law to add the crime of homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs to the list of serious violent offenses. In other words, if an individual commits this added crime, it would then constitute a “per se” or automatic serious violent offense. This means that offenders convicted of this DWI-related crime would only be eligible to earn up to four days of good time per month while in prison, as opposed to up to 30 days per month for crimes which are not listed or defined as serious violent offenses.

Specifically, the bill amends Section 33-2-34 (L) (4), which defines which offenses are to be characterized as “serious violent offenses”, to include as a serious violent offense “homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, as provided in Section 66-8-101 NMSA 1978.”

HB 87 would also amend the definition of Section §33-2-34 (L)(4)(p)(14), one of the so-called discretionary serious violent offenses to make it clear that third degree homicide by vehicle or great bodily harm by vehicle can constitute a serious violent felony if committed while violating Section 66-8-113 NMSA 1978, the reckless driving statute.

Finally, HB 87 would amend Section 33-2-34 (G) to provide that nothing in that statute shall be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of ~~[death]~~ life imprisonment without possibility of release or parole. This amendment to Section 33-2-34 (G) is necessitated by the fact that the legislature abolished the death penalty in 2009.

## **FISCAL IMPLICATIONS**

The New Mexico Corrections Department (NMCD) reports that if it continues to receive more and more inmates arriving as serious violent offenders each year to serve 85 percent of their sentences, at some point the NMCD inmate population is going to reach its rated or maximum capacity as more and more inmates serve longer sentences.

According to the NMCD, 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 \$36,700 per year in a state owned/ operated prison to \$30,093 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/operated facility is \$32,408 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/private facility.

This bill would require offenders to serve 85 percent of their sentence so using the current sentencing requirements under Section 66-8-102 NMSA 1978, offenders would serve the following additional time at a cost to the department of \$141. 3 thousand if only one person each is convicted for a fourth, fifth, sixth and seventh time.

- Fourth conviction – nine months
- Fifth conviction – 8.5 months
- Sixth conviction – 13.5 months
- Seventh conviction – 19 months.

The NMCD states in its response that the cost per client in Probation and Parole for a standard supervision program is \$2,608 per year. The cost per client in Intensive Supervision programs is \$1,068 per year. The cost per client in Community Corrections is \$5,524 per year. The cost per client per year for female residential Community Corrections programs is \$39,149 and for males is \$16,805.

The Public Defender Department (PDD) reports that while there might be a small rise in the number of trials necessary due to the rise in de facto penalty because of the increase in incarceration time for these crimes, such would likely be absorbed in the ordinary course of business.

The Administrative Office of the Courts (AOC) reports that any additional fiscal impact on the judiciary would 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.

Additionally, the number of cases which would result in plea agreements may decrease because of this enhanced penalty; there would be more jury trials and negatively affect the jury fund.

### **SIGNIFICANT ISSUES**

The New Mexico Sentencing Commission (NMSC) reports that on June 30, 2011, 23 offenders committed to the custody of the NM Corrections Department had a conviction for homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs as their highest charge. If HB87 becomes law, at some point in the future the increased length of stay for some of those offenders would begin to impact the state inmate population.

The cost to house those 23 offenders is \$779.7 thousand per year.

### **PERFORMANCE IMPLICATIONS**

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

According to the NMCD, this bill is likely to negatively impact the Department's ability to perform prison-related and probation/parole supervision services (with current levels of staffing) by substantially increasing the NMCD prison population at some point in the future. If the bill eventually results in significant increases in the NMCD prison population, it will increase the workloads of current prison staff.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to and in a few instances duplicates HB43. Duplicates HB150. Relates to HB44.

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