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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/11/14

**SPONSOR** Pacheco **LAST UPDATED** \_\_\_\_\_ **HB** 326

**SHORT TITLE** Certain Crimes for Earned Deductions **SB** \_\_\_\_\_

**ANALYST** Chenier

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

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Attorney General’s Office (AGO)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 326 would amend the Earned Meritorious Deductions Act (EMDA) by not allowing offenders serving life sentences without the possibility of parole or release to receive earned meritorious deductions (EMD). The bill would also add the crime of first degree murder when the offender is a serious youthful offender and 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 (SVO) that can earn only four days of good time for 30 days served.

First, second and third degree abuse of a child is currently included as a crime that judges have the discretion to decide whether the crime is eligible as an SVO. The bill would add the caveat “that does not result in death or great bodily harm” broadening the judge’s discretion.

### FISCAL IMPLICATIONS

Offenders convicted of crimes that are not serious violent offenses earn up to 30 days of good time per month. Offenders earning only 4 days per month of good time serve approximately 85 percent of their prison sentences, while those earning 30 days of good time per month generally

serve about 50 percent of their prison sentences. NMCD stated that this bill will not increase its incarceration costs during the relevant three year period. Most if not all offenders convicted under this bill would still be serving their basic prison sentences during the relevant three year fiscal period, regardless of whether they were earning 30 days or only 4 days of good time per month. The incarceration costs to NMCD generally increase only when the number of offenders sentenced to prison exceeds the number released that year. However, incarceration costs could increase in subsequent years as inmates convicted of these new SVOs serve 85 percent of their prison sentences instead of only 50 percent of their sentences.

## **SIGNIFICANT ISSUES**

The bill would designate homicide by vehicle and great bodily harm by vehicle as an SVO but does not propose changing the existing statute which leaves designation of those crimes as a SVO up to the court as listed in Section 33-2-34(L)(4)(o)(14), NMSA 1978. A choice must be made on whether those vehicle crimes will always be a serious violent offense, or whether it will still be up to the judge who presides over those cases to decide if they are an SVO.

The AODA provided the following:

When a district court sentenced a child as a serious youthful offender and included as part of the sentence a limit of their eligibility to no more than four days per month good time credits, authority to limit their eligibility was held to be implied within the court's discretion. See, *State v. Tafoya*, 2010-NMSC-019. Although the *Tafoya* decision affirmed limiting a child sentenced as a serious youthful offender for first degree murder to eligibility for no more than four days per month good time credits, the decision was, at least in part, based on the record in the case. Designating first degree murder committed by someone who is a serious youthful offender as a SVO in the statute would make it plain what good time credit eligibility in future cases would be.

The other changes in the bill: changing "injury" to "harm" and replacing "death" by "life imprisonment without possibility of release or parole" would make language in the EMDA consistent with current language in the related statutes.

## **TECHNICAL ISSUES**

The bill would make plain that the designation of child abuse "that does not result in death or great bodily harm," as an SVO is discretionary with the judge. However, it would leave in place the current language on "first, second or third degree abuse of a child..." See, Section 33-2-34(L)(4)(o)(9), NMSA 1978. Although someone may commit second and third degree child abuse that does not involve death or great bodily harm, there is no first degree abuse of a child that does not include death or great bodily harm. See, Section 30-6-1(E)--(G), NMSA 1978.

EC/svb:jl