

LFC Requester: _____

AGENCY BILL ANALYSIS
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original Amendment _____
Correction _____ Substitute _____

Date Feb. 8, 2017

Bill No: HB 328

Sponsor: William "Bill" R. Rehm

Agency Code: 264

Short Reckless Driving Penalties

Person Writing Gary Cade

Title: _____

Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB328 would add a new section to the homicide by vehicle statute that anyone “who commits homicide by vehicle while (violating the reckless driving statute) and while driving a stolen motor vehicle is guilty of a first degree felony.” It would also add another new section that a person, “who commits great bodily harm by vehicle while (violating the reckless driving statute) and while driving a stolen motor vehicle is guilty of a second degree felony.” (Emphases added.) The punishment for both offenses would be pursuant to the provisions of the Criminal Sentencing Act.

FISCAL IMPLICATIONS

Unknown. It is likely that the increased penalties will result in more litigation so more personnel and financial resources will be needed for the courts, prosecutors, defenders and—ultimately—the corrections department.

SIGNIFICANT ISSUES

HB 328 specifically states the punishment for vehicular homicide or great bodily injury (“GBI”) for someone who was driving recklessly in a stolen vehicle shall be the punishment provided by Sect. 31-18-15, NMSA 1978. The punishment for a first degree felony would be eighteen years imprisonment and a possible fine of up to \$15,000. See, Sects. 31-18-15(A)(3) and 31-18-15(E)(3), NMSA 1978. The punishment for a second degree felony would be nine years imprisonment and a possible fine of up to \$10,000. Essentially, reckless driving requires a showing that a driver acted with “total disregard for the safety of others.” See, *State v. Blakeley*, 90 N.M, 74 (Ct. App. 1977), *State v. Ibn Omar-Muhammad*, 102 N.M. 274 (1985).

Prosecutors may choose, at least in the relevant cases, to pursue child abuse charges instead of vehicular homicide or GBI. The age of the child and their degree of injury could affect that decision but child abuse charges might provide more severe sanctions than are provided in HB 328, and could be an option if facts would not support reckless driving, or could support both charges. If abuse of a child results in great bodily harm to the child, it is a first degree felony. See, Sect. 30-6-1(E), NMSA 1978. Negligent abuse of a child resulting in death is also a first degree felony. See, Sect. 30-6-1(F), NMSA 1978. Intentional abuse of a child at least 12 years old but less than 18 years old which results in death is a first degree felony. See, Sect. 30-6-1(G), NMSA 1978. Intentional abuse of a child less than 12 years old that results in death of the child is a first degree felony resulting in death of a child. See, Sect. 30-6-1(H), NMSA 1978. The punishment for that crime would be life imprisonment and, possibly, also a fine of up to \$17,500. See, Sects. 31-18-

15(A)(1) and 31-18-15(E)(1), NMSA 1978. The non-capital sentence enhancement for a felony resulting in death contained in Sect. 31-18-15(A)(2) has been held to not be limited to just second degree murder and manslaughter but also applied to conspiracy to commit murder. See, State v. Shije, 1998-NMCA-102. It has also been held the enhanced punishment because a death resulted, provided in Sect. 31-18-15(A)(4) can apply to vehicular homicide. See, State v. Guerro, 1999-NMCA-026.

In HB 328 someone convicted of driving a stolen vehicle recklessly and causing great bodily harm to a child would be guilty of a second degree felony, but if they committed child abuse and caused great bodily harm they would be guilty of a first degree felony. If the facts permit it and intentional child abuse was charged instead of the stolen vehicle reckless driving homicide proposed in the bill, then a sentence of life imprisonment (which carries a minimum sentence of 30 years imprisonment) might apply if a child, of any age, was killed. Since the punishment is so severe it is likely to be challenged, especially if they are not under age 12, on a claim that penalty was specifically intended for someone who committed in limited circumstances involving child abuse of a child under age 12 that was intentional and resulted in the child's death.

Another charging consideration is that child abuse (first, second and third degree) can be adjudged to be a serious violent offense that is eligible for only limited "good time" meritorious deductions from a prison sentence. See, Sect. 33-2-24(L)(4)(o)(9), NMSA 1978. If HB 328 is passed it's not clear that the "good time" credits could be limited because of the way the statute is worded so presumably applies only to, "third degree homicide by vehicle or great bodily harm by vehicle." See., Sect. 33-2-34(L)(4)(o)(14), NMSA 1978. (Emphasis added.)

A challenge under the general vs. specific crime rule might be pursued if child abuse charges were filed instead of or in addition to reckless driving vehicular homicide charges with a stolen vehicle. In previous appellate decisions on this subject, prosecutors have charged child abuse instead of, or in addition to, vehicular homicide which was classified as a third degree felony. The decisions usually state they are fact-specific but a reckless driving charge was determined not to be the more specific charge than child abuse and did not preempt it. See, State v. Guillez, 2000-NMSC-020. In another case, it was determined that vehicular homicide was a lesser included offense of child abuse when a drinking driver was convicted of both child abuse and vehicular homicide, so the duplicative sentence on vehicular homicide charges was voided. See, State v. Santillanes, 2001-NMSC-018. See also, State v. Gonzales, 2011-NMCA-081 (Under unique facts of case, vehicular homicide was a lesser included offense of child abuse) aff'd. on different grounds, State v. Gonzales, 2013-NMSC-081.

The selection of charges by prosecutors may be challenged on other grounds. Whenever people are treated differently for the same offense, it frequently results in an equal protection challenge. A person convicted of vehicular homicide in a stolen vehicle would receive a more severe sentence than someone convicted of second degree murder, which is punishable by fifteen years imprisonment and, possibly, a fine of up to \$12,500. See, Sects. 31-18-15(A)(4) and 31-18-15(E)(4), NMSA 1978.

A defendant convicted of first degree "depraved mind" murder (after a high speed chase and running a road block before he ran over a police officer who was out of his patrol car) was found to have acted in a way "greatly dangerous to the lives of others, indicating a depraved mind regardless of human life," and showed more than just "total disregard for the safety of others" that could have reduced the charge to reckless driving vehicular homicide. See, Ibn Omar-Muhammad, supra. Depraved mind murder has four significant elements: the accused's acts must have

endangered more than one person; the acts must have been intentional and of an extremely reckless character; accused must have subjectively intended to commit an act that has a great likelihood of resulting in death; and the accused must have known that his acts were greatly dangerous to others. See, State v. Dowling, 2011-NMSC-016. It is conceivable that a defendant charged with reckless driving vehicular homicide in a stolen vehicle might argue for a second degree murder charge, as a lesser offense of murder in the first degree, since it carries a lesser penalty than what is provided in this bill for reckless driving vehicular homicide in a stolen vehicle. This is more likely if the crime resulted in the death of a child and the defendant was facing life imprisonment as set out above but might apply even for an adult victim because the punishment would presumptively be a 15 year sentence, instead of the 18 year sentence prescribed by HB 328, and the sentence for any crime which is not a capital or first degree felony may be suspended or deferred. See, Sect. 31-20-3, NMSA 1978.

HB 328 would provide enhanced penalties for reckless driving vehicular homicide and GBI if the offender was driving a stolen vehicle. There is no enhancement for vehicular homicide and GBI in a stolen vehicle if the offender was under the influence of intoxicating liquor or drugs.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS