

LFC Requester:	
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AGENCY BILL ANALYSIS
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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 Jan. 13, 2016
Bill No: HB 83

Sponsor: Sarah Maestas Barnes
Short Increase Certain DWI
Title: Penalties

Agency Code: 264
Person Writing Gary Cade
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB 355
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 83 would change the penalty for homicide by vehicle and great bodily harm by vehicle to a second degree felony, instead of the current third degree felony. Otherwise it is identical to HB 359, introduced in 2015 by Rep. Maestas Barnes, and would also increase the penalties, including the minimum mandatory periods of incarceration, for persons convicted of driving while intoxicated (“DWI”) for the fourth, fifth, sixth and seventh times, all of which are either fourth or third degree felonies. It would also add an additional category of eighth, or subsequent, DWI’s that would be designated as a second degree felony and carry penalties even more severe than the customary punishment for a second degree felony under the Criminal Sentencing Act (“CSA”) or any current felony DWI’s.

FISCAL IMPLICATIONS

Whenever penalties are increased it is inevitable that more cases are resolved by litigation instead of by pleas because enhanced penalties and certainty they will be imposed mean there is less incentive to plead guilty. If HB 83 is adopted, it could result in more jury trials and more appeals and the district attorneys’, defenders’ and district and appellate courts’ workloads will probably all be increased. This is more likely than ever since the proposed penalties and minimum mandatory incarceration periods are noticeable increases over the punishment specified in the current DWI law. Because every felony DWI conviction would have a mandatory incarceration period that, presumptively, must be served in the department of corrections (“DOC”) the population of the state prisons would almost certainly increase. There might be a slight decrease in the county jails’ inmate populations since persons who could have previously served their sentence in jail would have to serve it in DOC if this bill becomes law.

SIGNIFICANT ISSUES

HB 83 would change homicide by vehicle and great bodily harm by vehicle to a second degree felony. The bill states those offenses would be punishable like other second degree felonies in the CSA. The potential sentencing exposure would be an increase for someone convicted of homicide by vehicle from the current nine years to 15 years, and from three years to nine years for someone convicted of great bodily harm by vehicle. However because those sentences would be the same as other second degree felonies in the CSA, sentences imposed for homicide by vehicle and great bodily harm by vehicle could be suspended in their entirety with no mandatory minimum period of incarceration. See, Sect. 31-20-3(A)-(B) and Sect. 31-20-4, NMSA 1978.

HB 83 also provides that the sentence for a fourth DWI conviction would be increased to a term of imprisonment of thirty months and increase the mandatory minimum period of incarceration to 18 months. The current basic sentence for a fourth DWI is 18 months with a mandatory minimum period of incarceration of six months. It would continue to be designated as a fourth degree felony.

The sentence for conviction of a fifth DWI conviction would also be increased, to a term of imprisonment of three years with a mandatory minimum incarceration period of two years, compared to the current sentencing provisions of two years with at least one year of mandatory incarceration. It would also continue to be a fourth degree felony.

The sentence for a sixth DWI conviction would also be increased, to a term of imprisonment of forty-two months with a mandatory minimum period of incarceration of thirty months. The current sentencing provision provides for a thirty month sentence with 18 months as the mandatory minimum period of incarceration. It would continue to be designated as a third degree felony.

The sentence for a seventh DWI conviction would also be increased, to a term of imprisonment of four years with a mandatory minimum period of incarceration of three years. The current sentencing provisions for a seventh DWI conviction are a three year term of imprisonment, with a two year minimum mandatory period of incarceration. It would also continue to be designated as a third degree felony.

HB 83 would add a new subsection for punishment of anyone convicted of DWI for the eighth, or subsequent, time. Those convictions would be designated as a second degree felony. The sentence prescribed for anyone convicted of an eighth or subsequent DWI offense would be a term of imprisonment of twelve years, with a minimum mandatory term of incarceration of ten years. By comparison, as drafted, neither vehicular homicide nor great bodily injury by vehicle would have a mandatory minimum sentence; instead both could have their sentences deferred or suspended.

The increased DWI sentences, with the smallest minimum mandatory incarceration period at least 18 months, would require most persons convicted of a DWI felony to serve their sentences in DOC unless they had substantial pre-sentence confinement credit. See, Sect. 31-20-2(A), NMSA 1978. A local sentencing option is available if the sentence is at least one year but not more than 18 months, but only under limited circumstances. See, Sect. 31-20-2(D) and E), NMSA 1978.

HB 83 would make no changes to any of the sentences specified for any DWI convictions that are misdemeanors—that is first, second and third convictions for DWI would continue to have the same penalties they do now. It would delete the phrase “traffic safety” that appears in front of “bureau” in the subsection that discusses rules pertaining to ignition interlock devices. It would also make some minor grammatical changes to the DWI statute to make it gender neutral.

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