

LFC Requester:	Aurora Sanchez
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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: Date 01/20/2016
Original **Amendment** **Bill No:** SB45
Correction **Substitute**

Sponsor: Lisa A. Torraco **Agency Code:** 264 (AODA)
Short Title: Misdemeanor for Child Left in Car while .08 **Person Writing:** Mary Lynne Newell
Title: Car while .08 **Phone:** 5753136890 **Email:** starlight@gilanet.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
none	none		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	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: This bill creates a new misdemeanor crime of driving a vehicle while under the influence .08 or above, while a minor under the age of 18 is in the car.

FISCAL IMPLICATIONS

Unlikely additional impact as driving under the influence of .08 and above is already an offense, and cases with children in the car may already be prosecuted under other theories when circumstances warrant.

SIGNIFICANT ISSUES

Currently, driving DWI with a child in the car can, depending on the facts, be charged with child abuse. If that does not result in death or great bodily harm, it is a third degree felony for a first offense and a second degree felony for a second or subsequent offense. If it does result in great bodily harm it will be punished as a first degree felony, and if it results If it is charged as vehicular homicide, it will have a penalty of six years (third degree felony resulting in death of a human being). In criminal law, the more specific crime must be charged under the facts, so if this bill passes, it would draw the definition of this offense more closely and hence have the effect of reducing the penalty currently in use (third degree up to life imprisonment, as delineated above) down to this misdemeanor offense (364 days in jail). That would be detrimental to the prosecution of these types of offenses and in deterring or punishing the harm sought to be prevented.

Further, The bill as drafted makes no distinction between minors in the car and the possibility that a minor may in fact be the intoxicated driver. Another issue will be the multiple passenger situation: a car full of teens with an intoxicated driver, whether underage or not—will the driver be charged multiple counts for each passenger, or not? Likely the offenses will all merge into one for sentencing, at least.

The bill also makes no consideration for other circumstances under which DWI offenses are typically charged—for example, refusal to submit to testing upon suspicion of DUI. And, driving while under the influence of other substances not alcohol, or a mixture of substances, which is increasingly accounting for more DUI cases.

PERFORMANCE IMPLICATIONS

For the District Attorneys, this law would cripple our ability to effectively prosecute crimes in this serious situation, as well as increase our need to advise or assist in peace officer

prosecutions of these misdemeanors.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Cases will continue to be prosecuted under other laws, with better penalties.

AMENDMENTS