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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/16

SPONSOR Gonzales/Youngblood LAST UPDATED \_\_\_\_\_ HB 182

SHORT TITLE Crime of Cargo Theft SB \_\_\_\_\_

ANALYST Downs

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See fiscal implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Public Safety (DPS)  
 Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Attorney General's Office (AGO)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 182 proposes making cargo theft, the theft of commercial goods in transport, or the vehicle transporting the commercial goods, a second degree felony punishable by nine years imprisonment accompanied by a fine not to exceed the fair market value of the stolen property and the cost to recover it. Currently this type of crime is under regular theft and auto burglary statutes. The effective date is July 1, 2016.

### FISCAL IMPLICATIONS

According to AOC, the only costs associated with the bill would be the minimal expense to update and distribute the statutory changes. Additional impact would be proportionate to enforcement and prosecutions of the law. With additional laws and sentences there is the potential for an increase in appeals, which could affect caseloads and operating budgets in the courts.

Additionally, the Public Defender Department would see an increase in indigent defense in association with any increase in prosecutions. PDD stated it would likely be able to absorb any litigation increases from this proposed law within its current budget and operating levels because this type of crime is not a prevalent charge in New Mexico. Should the volume of cargo theft cases increase, PDD stated it may realize the need to hire trial attorneys with greater expertise in mid-level felony cases. The average salary and benefits of an associate trial attorney is \$93.2 thousand.

The New Mexico Corrections Department (NMCD) estimated that only a small number of additional offenders would be convicted under this new crime resulting in only a minimal increase to prison population. However, enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to NMCD, the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer length of stay would increase that cost. In addition, sentencing enhancements could contribute to overall prison population growth as increased sentence lengths decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

## **SIGNIFICANT ISSUES**

According to the Department of Public Safety, the bill's intent for the kind of vehicles that will actually qualify under the crime of cargo theft is unclear. DPS stated, "The definitions for 'commercial goods' and 'vehicle' as currently drafted in the bill are broad enough to include any goods transported for purchase or sale, and virtually any type of vehicle that carries those goods, whether commercial or not." This implies that the theft of any vehicle could potentially qualify as cargo theft.

DPS also indicated that the fine, which will be equal to both the fair market value of the property and the cost of recovering the property, is similar to Section 31-17-1 NMSA 1978 which calculates restitution. Typically, the fee charged to the defendant and the actual restitution are separate, however, in HB 182 it is unclear if the entirety of the fair market value and cost to recover are together the restitution, or together the fee.

The Administrative Office of the Courts stated the penalties in HB 182 are mandatory, which means sentences for cargo theft would not be subject to judicial discretion. NMCD indicated a similar concern. Sentences, according to the provisions of Section 31-18-15 NMSA 1978, are currently subject to judicial direction. Additionally, PDD added under this bill, "The theft of a single box containing one stereo worth \$200 from the unattended open container in the back of a commercial carrier would result in a mandatory prison sentence of nine years."

JD/jle