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FISCAL IMPACT REPORT

	ORIGINAL DATE	1/23/18			
SPONSOR	LAST UPDATED	2/14/2018	HB	CS/19, 215, 217, 266 & 271/aHF1#1/aHF1#2/ aSJC	
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SHORT TITLE	Increase Penalty for Felon with Firearm			SB	
				Edwards/Esquibel/ Sánchez	
				ANALYST	Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$900.0	\$900.0	\$1,800.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB25
Relates to HB2, HB29, HB118, HB120

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Public Defender Department (LOPD)
New Mexico Attorney General's Office (NMAG)
New Mexico Sentencing Commission (NMSC)
New Mexico Corrections Department (NMCD)
Public Employees Retirement Association (PERA)

Responses Not Received From

Department of Finance and Administration (DFA)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amends Section 3(7)(a) by adding that, to qualify for law enforcement officer retention payment distributions, the agency must have had a vacancy rate of 10 percent on January 1, 2018.

The SJC amendment strikes Section 12 and Section 26 in its entirety.

The amendment makes a person who fails to remove and return an emergency medical technician license plate as required by 66-3-424.16 guilty of a penalty misdemeanor.

Section 40(B)(4) requires that, before authorized removal, there be no attempts for a minimum of six months to circumvent or tamper with an ignition interlock; the amendment adds “removal” to this requirement.

Section 40(B)(5) states there must be no two “failed breath tests that prevented the driver from starting the vehicle.” The amendment strikes this language and adds in lieu thereof “vehicle lockouts.”

The amendment adds a subsection E to Section 40 to define “vehicle lockout” as meaning that (1) a driver has failed a breath test six times within a period of three hours or (2) initial breath tests or random breath re-tests ten times within a period of thirty days.

The amendment adds a new section amending 66-5-8 NMSA 1978, making falsifying affidavits required by the Motor Vehicle Code perjury as provided in Section 30-25-1 NMSA 1978.

The amendment strikes failure to surrender a parking placard as a penalty assessment in its entirety and fixes an erroneously stricken dollar sign.

The amendment strikes violations of 66-3-411 (Special registration plates; prisoners of war and surviving spouses; submission of proof; penalty) as a penalty assessment. The amendment also strikes 66-3-417 and 66-3-419. The amendment inserts in lieu thereof 66-3-417 (Radio station licensees; special registration plates; fee), 66-3-419 (Special registration plates for armed forces veterans), 66-3-421 (Special registration plates; New Mexico rangers and New Mexico mounted patrol; submission of proof; penalty), 66-3-422 (Special registration plates for firefighters and volunteer firefighters), 66-3-424.4 (Standardized special registration plate for retired members of the New Mexico national guard), 66-3-424.5 (Special registration plates for New Mexico members of the fraternal order of police), 66-3-424.7 (Registration plates for members of the civil air patrol, New Mexico wing), 66-3-424.9 (Standardized special registration plate for retired firefighters), 66-3-424.13 (Standardized special registration plate for retired New Mexico state police officers), and 66-3-424.16 (Special registration plates for emergency medical technicians).

Lastly, the amendment renumbers sections to correspond with the amendments.

Synopsis of House Floor Amendment #2

House Floor Amendment #2 strikes boat numbering and equipment violations from Section 54 which outlines misdemeanors and penalty assessments.

HFI#2 also strikes Sections 56-60 and inserts new sections in lieu thereof which address penalties for violations within the Boat Act (66-2-23 NMSA 1978).

Synopsis of House Floor Amendment #1

House Floor Amendment #1 clarifies how a correctional facility should coordinate with the Human Services Department (HSD) to determine eligibility for Medicaid for incarcerated individuals.

HFI#1 also amends Section 2 of the bill, creating a new paragraph C, clarifying how care coordinators shall link inmates enrolled in a Medicaid managed care program to care coordination prior to release.

Synopsis of Bill

House Judiciary Committee Substitute for House Bills 19, 215, 217, 266, and 277 proposes the following:

Section 1, formerly HB 217, amends 27-2-12.22 NMSA 1978 by directing correctional facilities to inform the Human Services Department (HSD):

- when an inmate is eligible for release,
- to assist HSD and its contractors in gaining access to incarcerated individuals to make eligibility determinations and enroll eligible individuals in Medicaid pre-release or upon release,
- facilitate HSD's or their contractor's provision of care coordination; and,
- Upon the written request of a county, the department shall provide a behavioral health screening tool to facilitate screenings performed in accordance with the provisions of Subsection A of Section 2 of this 2018 act, technical assistance, and training and certification of county jail presumptive eligibility determiners.
- Defines "care coordination" as an assessment for health risks and the creation of a plan of care to address an individual's comprehensive health needs, including access to physical health care and mental health services; substance use disorder treatment; and transportation services. HSD shall provide information to correctional facilities seeking Medicaid care coordination for qualifying inmates.
- Adds new material on detailing how care coordination at correctional facilities should be managed, including:
 - screening for mental illness and habitual substance abuse within thirty days of incarceration in that facility;
 - the opportunity to enroll in Medicaid;
 - care coordination for inmates already enrolled in Medicaid;

Section 3, formerly HB 215, amends 29-13-7 NMSA 1978 by proposing a new use of already distributed funding, contingent on availability, from the Law Enforcement Protection Fund (LEPF) for retention bonus payments for tenured law enforcement officers who are otherwise eligible to retire.

- The municipality or county law enforcement agencies requesting the distribution must match the retention payment with \$7.5 thousand and must have at least a 10 percent vacancy rate. With both state and local matches, each eligible officer could receive a total \$15 thousand retention incentive.
- Officers eligible for the retention payments must have 20 years of actual service credit earned under a municipal police member coverage plan as determined by PERA.
 - The retention lump sum payments would not constitute base salary or wages under the Public Employee Retirement Association (PERA) act for pension purposes.
- Distributions for retention lump sum payments are effective until June 30, 2021.

Section 4, formerly HB 19, proposes to amend Section 30-7-16 NMSA 1978 to change the violation of a felon in possession of a firearm to a third degree felony if the person has previously been convicted of a capital felony or a serious violent offense provided in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978.

Section 5, formerly HB 271, amends statutes governing the following offenses:

- Littering
- Vehicle Registration
- Prohibited acts and penalties, special registration plates and parking placards:
 - False information to acquire
 - Person unlawfully using plate or placard
 - Failure to surrender parking placard
- Improper display of registration plate
- Horseless carriage registration
- New owner to secure transfer of registration and new certificate of title
- Expiration of dealer plates
- Special registration plates
- Bicycles
- Improper equipment
- Vehicles without required equipment or in unsafe condition
- License carried and exhibited on demand
- Notice of change of address or name
- Authority to suspend or revoke license
- Driving with a suspended license
- Pedestrian control signals
- Flashing signals
- Display of unauthorized signs, signals, or markings
- Pedestrian's right of way in crosswalks
- Pedestrian violations
- Riding improperly on motorcycles
- Restriction on use of video screens in motor vehicles
- Driving on mountain highways
- Coasting prohibited
- Animals on highway in darkness
- Failure to appear
- Boat numbering violation
- Boat equipment violation
- Muffling devices

The substitute bill increases penalty assessments on many existing penalties and changes many penalties from a misdemeanor to a penalty assessment misdemeanor. Section 61 repeals Sections 30-8-12 (conduct offensive to public well-being, petty misdemeanor), 30-8-13 (unlawfully permitting livestock upon public highways, petty misdemeanor), and 66-3-424.2 (standardized plate, retired NM State Police officers) NMSA 1978.

Section 40, formerly HB 266, amends Section 66-5-33.1 NMSA 1978 to add two new requirements for the removal of an ignition interlock and reinstatement of a driver’s license which was revoked for DUI. In addition to the current requirements, HB 266 would require “evidence that the ignition interlock device has recorded no more than two failed tests during the six months prior to reinstatement of the unrestricted driver's license; and evidence of verified active usage as that phrase is defined by the Traffic Safety Bureau of the Department of Transportation.”

FISCAL IMPLICATIONS

The substitute bill is broad in its effects on the criminal justice system, making the overall fiscal impact difficult to determine. However, the impact to revenue and operating budgets could be more than the provided estimates due to lack of information with which to evaluate the various sections of the bill. Some budget savings could be realized from fewer court proceedings and additional revenue from increased penalty as provided in Section 5.

Section 1- Care Coordination for Inmates: \$500 thousand estimated budget impact

Section 1 of the bill, directing correctional facilities to work with HSD to provide care coordination for inmates, including pre-enrollment in Medicaid, could generate significant costs for additional staffing, information technology, screenings, assessments, and costs to Medicaid program and behavioral health programs around the state.

HAFC substitute for House Bill 2 et. al. includes a \$500 thousand special appropriation to the Human Services Department (HSD) contingent on enactment of House Bill 20 or similar legislation to assist jails and prisons to initiate a recidivism reduction program.

Section 3 – Police Officer Retention Payments: no impact

Remaining balances in the LEPF at the end of the fiscal year currently revert back to the general fund. Because the bill only adds retention payments as an authorized use for LEPF funding and does not increase the distribution of funding, the bill has no impact on LEPF balances or reversions to the general fund.

No comprehensive information is available detailing the vacancy rate at each police department around the state and how many officers would meet eligibility requirements. However, assumptions may be made using data provided on the Department of Finance and Administration (DFA) website detailing LEPF distributions made to municipal and county police departments and data from specific police departments. According to DFA data, 3,752 certified officers work for county and municipal police departments around the state, not including the Department of Public Safety. For the purposes of this analysis, it is assumed that all the police departments have a 10 percent vacancy rate.

Assuming that 5 percent of the 3,752 officers have been employed for more than 20 years in FY19 and that 80 percent of officers take the retention incentive (with the other 20 percent actually retiring or moving out of state), 150 officers could qualify for retention payments of \$7.5 thousand from the LEPF through the provisions of the bill. Retention payments to those 150 officers could be up to \$1.1 million in FY19.

In FY20, assuming the total number of certified officers increases each year and that more officers become eligible for retirement and accept retention payments, the FY20 cost escalates to \$1.6 million and \$2.1 million in FY21, the last year of Section 3’s applicability.

Department	Authorized Officers	Vacancy Rate	Filled Officer Positions	Officers with 20 years of experience	Percent of Filled Officers with 20 years of experience
Las Cruces Police Department	200	10%	180	11	6%
Department of Public Safety	722	11%	642	39	6%
Albuquerque Police Department	1,000	15%	855	30	4%
Average Percentage of Officers with 20 years of experience or more:					<u>5%</u>

Source: Association of Counties, Municipal League, Department of Public Safety

Retention Payment Cost Estimate				
Fiscal Year	FY19	FY20	FY21	3 Year Total
Total number of certified officers:	3,752	3,790	3,828	
% of Total number of certified officers with 20 years of exp or more:	5%	7%	9%	
# of Total number of certified officers with 20 years of exp or more:	188	265	345	
Estimated 80 percent keep working:	150	212	276	
Incentive from LEPF:	\$ 7,500	\$ 7,500	\$ 7,500	
Total cost:	\$ 1,125,600	\$ 1,591,598	\$ 2,067,063	\$ 4,784,262

Source: DFA, LFC files

PERA states Section 3 “rewards seasoned law enforcement officers for continued public service with bonuses, which will not be considered to be salary under the PERA Act and ‘spike’ PERA pensions. Those officers agreeing to work longer will continue to accrue service credit up to a maximum of 90 percent of the final average salary and therefore receive a higher lifetime pension benefit, as well as the bonus.”

In past analysis of bills making distributions from the LEPF, DFA has explained that “per 29-13-3 NMSA 1978, the LEPF is funded from 10 percent of all money received for fees, licenses, penalties and taxes from life, general casualty, and title insurance business pursuant to the New Mexico Insurance Code. This implies that the revenue received will fluctuate from year to year depending on volume of related insurance business activity. there are uncertainties surrounding the amount of annual revenue received by the LEPF. Annual revenues into the LEPF are dependent on the business activity of specific types of insurance. Changes in the insurance industry can make it difficult to make accurate annual revenue projections.”

Historical Reversions from the LEFP	
FY10	\$ 9,920.2
FY11	\$ 9,089.3
FY12	\$ 8,291.1
FY13	\$ 4,575.5
FY14	\$ 3,936.3
FY15	\$ 7,641.5
FY16	\$ 15,277.2
FY17	\$ 18,382.6
FY18 (projected)	\$ 14,000.0
FY19 (projected)	\$ 14,600.0

Source: Audit Reports

Section 4 – Penalties for a Felon with a Firearm: at least \$400 thousand estimated budget impact

The Public Defender (LOPD) anticipates a need for additional appropriations should this bill become law. Although it does not annualize the cost, PDD does provide the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund annual operating budget to add one attorney is \$175.1 per year.

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,776 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD’s general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

Section 5 – Revising Certain Criminal Penalties: indeterminate, but potentially substantial, revenue and budget impact

The bill proposes to add some penalty assessments which could impact the amount of revenues received by the courts and TRD. The LFC does not have access to and did not receive data that could be used to generate a revenue or operating budget fiscal impact projection. *Savings realized from fewer court proceedings and additional revenue from penalty assessments could potentially reduce strain on the general fund and impact other state funds that revenues from penalty assessments are currently credited to, as outlined in 66-8-119 NMSA 1978.*

LOPD explains “the proposed reduction in penalty for many of these offenses could only have a positive effect on the workload of the LOPD, rendering the agency better able to address its constitutionally mandated duty of defending New Mexicans accused of more serious crimes. To the extent this results in fewer trials, fewer additional resources would have to be allocated to our stretched-to-the-limit criminal justice system. Such benefits should inure to the LOPD, police, DAs, NMAG, courts, counties and possibly NMCD. Offenders would be likely to simply pay the penalty assessments, whereas the in-court battles under the present statutory scheme guarantees wasted resources and “time served” punishments in lieu of revenue. Enactment of the bill would result both in an increase in revenue and a decrease in pointless waste of LOPD, police, court, county and DA resources.”

The analysis below is based on last year’s House Bill 428:

AOC explained via email that in order to estimate how many people take the offer to accept the penalty assessment and pay the Motor Vehicles Department (MVD) directly (Section 66-8-117), AOC would need to contact MVD and compare the number of cases where people chose to appear in court and then extrapolate that percentage to the new charges that would become penalty assessments under the bill.

In order to properly estimate the cost savings of the bill on the courts, the AOC would have to analyze a number of factors:

1. the average number of cases containing the charges impacted by this bill processed by the courts each year;
2. the number of cases that carry other charges which would still require court hearings (such as DWI cases that have other traffic charges attached), because the court would still have to spend the same amount of time and resources adjudicating those cases; and
3. after estimating the number of cases that are purely penalty assessments under the new bill, AOC would then have to determine which of those cases are already covered by local rules which already allow the court to assess a penalty on some of these charges. For example, the Dona Ana Magistrate Court has Local Rule Three, which makes some Motor Vehicle Code violations "local penalty assessments." Several courts have similar local rules, so those charges that are already covered by local rule would not lead to cost savings in those courts by making them penalty assessments in this bill.

The AOC stated once all of those factors are considered, and possibly others that will become more clear as the study progresses, the AOC may be able to develop a reasonable estimate of the cases that would be affected by this bill and the fiscal impact that it would have on the courts. This project would take several months to complete.

The Taxation and Revenue Department stated via email that the bill does not directly affect MVD programs as the bill mainly makes changes to criminal infractions.

The AOC states “the bill’s penalty revisions in many instances reduce penalties and may obviate the need for some court proceedings. Additional fees defined by Section 66-8-116.3 will still be assessed. In decreasing the incentive to resolve tickets (see “Significant Issues” #2, below), fewer penalty assessments may be paid, as well as the accompanying fees that are credited to court-related funds. This reduction in funding could impact court resources and the provision of services and programs within the courts. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.”

Section 40 - Removal of Ignition Interlocks: minimal estimated budget impact

TRD, the department housing the Motor Vehicles Department (MVD) did not provide analysis for this bill. In response HB 49 from 2017 with some similar changes to the interlock program, TRD reported “that it will cost \$16.8 thousand for its information technology staff to make and implement the necessary changes to the motor vehicle system. Those changes will take approximately six weeks to complete. It also points out that if the DWI Compliance Unit has to review for additional requirements more staff may be needed. The average salary and benefits of one compliance officer is \$33.4 thousand.”

The AOC explains “HB 266 would have minimal fiscal implications for the courts. HB 266 would only impact the Motor Vehicle Department (MVD) requirements for reinstating an unrestricted driver’s license of someone who had their license revoked for DUI. The criminal sentencing requirements for interlock compliance are found in Section 66-8-102(O) – (Q) NMSA 1978. Those requirements are unaffected by this bill. There will be a minimal fiscal impact due to updated legislation and statewide distribution of new laws.”

SIGNIFICANT ISSUES

The New Mexico Sentencing Commission states that “given the disparate purposes of this substitute bill, care should be taken that it does not violate the provisions of Art. IV, Sec. 16 of the New Mexico Constitution, known as the ‘logrolling’ provision, or the single subject rule.”

Section 1- Care Coordination for Inmates

A 2012 Legislative Finance Committee program evaluation focused on individuals incarcerated in state prisons and noted the following:

- 95 percent of incarcerated offenders will be released back into the community;
- About 50 percent of offenders will return to prison within five years, with the average offender making three trips to a New Mexico correctional facility;

- Taxpayers pay costs of arresting, prosecuting, housing, rehabilitating and supervising offenders many times over.
- If current trends hold, offenders released in FY11 will cost taxpayers an estimated \$360 million in corrections costs alone over the next 15 years.
- Reducing recidivism, even by just 10 percent, can save millions.

[NM Legislative Finance Committee, “*LFC Results First: Evidence-Based Programs to Reduce Recidivism and Improve Public Safety in Adult Corrections*,” July 2013]

The Administrative Office of the Courts reports, based on a study in Washington State, having Medicaid at release was associated with a 16 percent reduction in the average number of subsequent detentions, and enhanced community service use after jail release. [Morrissey J. et al. (2007). The Role of Medicaid Enrollment and Outpatient Service Use in Jail Recidivism Among Persons with Severe Mental Illness. *Psychiatric Services* 58:794-801.3; Morrissey JP, Steadman HJ, Dalton KM, Cuellar A, Stiles P, Cuddeback GS. (2006) Medicaid enrollment and mental health service use following release of jail detainees with severe mental illness. *Psychiatric services* 57:809-815]

Section 3 – Police Officer Retention Payments

PERA explains “lump-sum retention bonuses are not included with the definition of salary for PERA pension calculation purposes and will not produce pension spiking that is inconsistent with actuarial assumptions used by PERA’s actuaries to measure future liabilities.”

PERA also states that “SB 27, passed during the 2013 Legislative Session, increased the maximum pension amount from 80 percent to 90 percent of final average salary. For the average Municipal Police Officer in a 20-year retirement plan, this could mean an additional \$600 thousand in lifetime retirement benefits by working 25.72 years instead of retiring at first eligibility. The PERA Board specifically included this provision in its reform proposal to address concerns expressed at the time about potential retention issues in public safety positions.”

Finally, PERA explains their fund balance was \$15.1 billion on June 30, 2017. “During this same period, PERA paid out benefits to retirees and beneficiaries in the amount of \$1.1 billion. For the year ending June 30, 2017, the Municipal Police Plan’s unfunded actuarial accrued liability (UAAL) increased from \$500.7 million to \$535.2 million. The funded ratio increased from 79.6 percent to 79.1 percent, primarily due to salary increases that exceeded actuarial assumptions.”

Section 5 – Revising Certain Criminal Penalties

The AOC submitted the following detailed analysis in response last year’s HB 428:

- 1) Throughout the Motor Vehicle Code (MVC), penalties vary and are at times pursuant to Section 31-19-1 or pursuant to Section 66-8-7 NMSA 1978, or not specified. Section 31-19-1 provides for a term of imprisonment of less than one year or a fine of \$1,000 or less or both imprisonment and fine in the discretion of the judge for a misdemeanor. A petty misdemeanor carries a term of imprisonment of six months or less or a fine of \$500 or less

or both imprisonment and fine in the discretion of the judge. Section 66-8-7 NMSA provides that a violation of the MVC is a misdemeanor unless declared a felony, and provides a misdemeanor penalty of a fine of \$300 or less or a term of imprisonment of 90 days or less or both. In revising current penalties as penalty assessment misdemeanors, the bill is removing the discretion of the judge to adjust a sentence for the benefit of the public or an offender, given the offender's needs and circumstances and record, the circumstances surrounding an offense and the need to protect the public and rehabilitate the offender.

- 2) The bill amends Section 66-8-126 NMSA to provide that a failure to appear in court after the issuance of a traffic citation is a penalty assessment misdemeanor carrying a \$50 fine. The bill amends Section 66-5-30 NMSA 1978 to remove as cause for license suspension that the licensee has failed to fulfill a signed promise to appear or notice to appear in court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code (MVC) or pursuant to the laws of the tribe, or that the licensee has failed to pay a penalty assessment within 30 days of the date of issuance by the state or a tribe. The bill amends Section 66-5-39 NMSA 1978 to provide that driving while a license is suspended is a penalty assessment misdemeanor, carrying a \$100 fine. Under the bill's amendments, a licensee could fail to appear without risking a license suspension, calling into question the incentive for a licensee to appear in court upon a promise or notice to appear. Additionally, if driving with a suspended license leads to a fine of \$100, rather than the current Section 66-5-39 misdemeanor penalty requiring not less than 4 days or not more than 364 days of imprisonment or participation in a certified alternative sentencing program and the imposition of a fine of \$1,000 or less and potential 30-day vehicle immobilization and mandatory extension of the period of suspension for an additional like period, where is the incentive to comply with licensing requirements or the payment of the \$100 fine? The bill's amendments remove the court's discretion in crafting a sentence for the offense of driving while a license is suspended that will adequately protect the public, as well as punish the offender.

3) A license can be suspended for a number of reasons, including traffic violations, DUI offenses, and failure to pay child support. Section 40-5A-8 NMSA 1978 permits a district court, as part of a judgment and order for support, to require a person who has failed to pay child support to surrender a license. Section 40-5A-6 NMSA 1978 provides that the failure of a licensee to comply with a judgment and or for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. Section 40-5A-3(G) NMSA 1978 defines license to include a driver's license. If, under the bill, driving with a suspended license is a penalty assessment misdemeanor carrying a \$100 fine pursuant to Section 66-8-116 NMSA 1978, will a court still be able to enforce child support obligations through license suspension? If the \$100 penalty is paid, is the license still suspended due to a failure to pay child support? How does the bill's amendment affect the court's ability to address policy reasons for the license suspension?

4) There is a question as to the effect of the bill's amendments on reciprocal agreements to suspend licenses. (e.g. license suspended in Arizona, suspension recognized in New Mexico).

LOPD explained in response to the current bill:

The *de minimis* offenses addressed by the bill's reforms already are usually punished by

nothing more than fines, but their present classification as crimes punishable by imprisonment require the involvement of LOPD at court. Regular case files are opened upon application of the offenders, and staff time required is the same as for any other case. Admittedly, attorney time tends to be less implicated and requires less experienced practitioners, but the drain on LOPD resources adds up. The bill provides a nobody-loses, commonsense solution to this drain - that is actually likely to enhance revenue collection.

Under present statute, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. The bill would have the effect of somewhat reducing indigent defense workload, which is likely to reduce need for increases in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the effect on required resources would be necessary after enactment.

Section 40

The AOC states “the requirements of Section 66-5-33.1 NMSA 1978 may come to be at odds with Section 66-8-102(P) NMSA 1978. That Section allows a district court to restore the driver’s license of a fourth or subsequent offender after five years from the date of conviction for good cause shown. Therefore, the court could find good cause, even where the person may not have met all the requirements of Section 66-5-33.1 NMSA 1978. This will also undoubtedly have a fiscal and administrative impact on the MVD, because they will have to analyze whether these more onerous conditions have been met before reissuing unrestricted drivers’ licenses.”

The NMAG states sound attempts to improve road safety, especially given the high rate of fatalities related to alcohol, are needed. NMAG believes the particular additional sections contained within this bill serve the goals of traffic safety.

OTHER SUBSTANTIVE ISSUES

LFC has concerns that police departments could inflate FTE levels artificially to qualify for the retention payments in Section 3 of this bill.

LFC also has concerns that Section 3(A)(7) language allowing any officer who has at least twenty years of actual service credit earned under a municipal police member coverage plan as determined by PERA to qualify for retention payments may be too broad. Establishing a minimum service time with a specific department, such as 3 years, could help control potential expenditure levels.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Section 1- Care Coordination for Inmates

HAFC substitute for House Bill 2 et. al. includes a \$500 thousand special appropriation to the Human Services Department (HSD) contingent on enactment of House Bill 20 or similar legislation to assist jails and prisons to initiate a recidivism reduction program.

House Bill 160 would amend the powers and duties of the Human Services Department’s (HSD) Behavioral Health Services Division (BHSD) pertaining to nonviolent adult and juvenile offenders who have behavioral health diagnoses. The bill would require BHSD to create, implement, and evaluate for effectiveness a framework for targeted, individualized interventions that address those individuals’ behavioral health needs and connect them to resources and services that reduce the likelihood of recidivism, detention, and incarceration. Such services may include supportive housing, public assistance, medical assistance, behavioral health therapy and employment training.

House Bill 135 would amend the power and duties of the Behavioral Health Services Division of HSD to create, implement and continually evaluate the effectiveness of a framework for targeted, individualized interventions that address the behavioral health needs of nonviolent adults and juvenile offenders who have behavioral health diagnoses, and connect them to resources and services. Where House Bill 160 and House Bill 135 differ is that HB135 adds at-risk youth to the individuals served by the additional BHSD duties. HB135 also creates a county behavioral health transportation fund and allocates \$1 million to support that fund.

House Bill 20 requires that correctional facilities screen for mental illness and substance use disorder and help connect inmates to behavioral health services upon release. Depending on how the term “offender” is interpreted, there may be duplication of requirements for corrections (HB20) and HSD (HB160).

Section 3 – Police Officer Retention Payments

Relates to HB 21.

Section 4 – Penalties for a Felon with a Firearm

Conflicts with HB25, Increased Penalty for Felon with a Firearm.

Relates to: HB29 Sentencing for Firearms in Noncapital Felony; HB118 Change Firearm Violation Classification; HB120 Sentencing Enhancement for Certain Crimes.

Section 40 - Removal of Ignition Interlocks

Relates to HB 34 and HB 255.

TRE-RAE-ABS/sb/al/jle