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FISCAL IMPACT REPORT

SPONSOR <u>Borrego/Sanchez/De La Cruz</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/27/23</u>
SHORT TITLE <u>Penalties for Vehicle Thefts</u>	BILL NUMBER <u>House Bill 491</u>
	ANALYST <u>J. Torres</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY26	FY28	FY30	5 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	\$96.8	\$492.5	\$500.6	\$1,926.6	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

- Department of Public Safety (DPS)
- New Mexico Corrections Department (NMCD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- New Mexico Attorney General (NMAG)
- New Mexico Sentencing Commission (NMSC)
- Corrections Department (NMCD)
- Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of House Bill 491

This bill proposes enhanced penalties for the crimes of unlawful taking of a motor vehicle (Section 30-16D-1 NMSA 1978), embezzlement of a vehicle or taking of a motor vehicle (Section 30-16D-2 NMSA 1978), fraudulently obtaining a vehicle or taking of a motor vehicle (Section 30-16D-3 NMSA 1978), and receiving or transferring stolen vehicles or taking of motor vehicles (Section 30-16D-4 NMSA 1978).

Under the revised penalties, anyone convicted for these crimes could be guilty of a fourth-degree felony for a first offense; a third-degree felony for a second offense, regardless of which provision was the first offense; and a second-degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB491 is anticipated to increase the amount of time individuals spend incarcerated in New Mexico's prison system.

The changes proposed by HB491 would only have an impact when an individual who would otherwise have been subject to a fourth-degree felony penalty (no previous convictions for the current charge) is instead subject to a third-degree felony penalty (one previous conviction for one of the charges *other* than the current charge) or second-degree felony penalty (two or more previous convictions for one or more of the charges *other* than the current charge), or when an individual who would otherwise have been subject to a third-degree felony penalty (one previous conviction for the current charge) is instead subject to a second-degree felony penalty (one previous conviction for the current charge and one or more previous convictions for one or more of the charges *other* than the current charge).

The Sentencing Commission (NMSC) reports 189 people were arrested for two or more of the different specified charges over the six-year period from FY17 to FY22, an average of 32 arrests per year. Using an estimated conviction rate of 27 percent, this analysis projects nine individuals may be impacted by the changes proposed by HB491. Based on estimates of actual time served for second-, third-, and fourth-degree *property* felonies for individuals released from prison in FY21 provided by NMSC, this will result in an average cost of \$55.6 thousand per offender and \$500.6 thousand overall. Because these changes effectively increase the penalties for existing crimes for which individuals would have otherwise served shorter terms in prison, these additional costs will not be felt until those individuals would have otherwise been released, which this analysis estimates would be in FY26, with a cost of \$96.8 thousand. These costs are projected to increase over the following three years (as more individuals are incarcerated for this crime) and level out in FY29 (as offenders begin to be released from prison) and future fiscal years, an annual cost of \$500.6 thousand.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB491, are not included in this analysis, but could be moderate.

This bill effectively increases sentences for acts that are already criminalized. This analysis does not include potential benefits of crime deterrence due to increased punishment because research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

SIGNIFICANT ISSUES

HB491 effectively increases sentences for existing crimes. Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful to community safety. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2nd Judicial District (Bernalillo County) that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and when felonies rose in 2020, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.

LOPD states:

Notably, the Legislature created a new crime of “operating a chop shop” during the 2022 session, designed to target individuals who make a career of vehicle theft and resale. *See* 2022 N.M. Laws, Ch. 56 § 49, *available at* <https://nmonesource.com/nmos/nmsl/en/item/18453/index.do#!b/c56s49>. 2023’s HB491 has some overlap with that newly enacted crime as it relates to a pattern of conduct.

It is well-established that incarceration in general is not a deterrent to committing a crime, and even the death penalty has not been proven to deter criminal activity. *See Five Things About Deterrence*, Nat’l Inst. of Justice (May 2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf>. In fact, more time behind bars can increase the likelihood that someone will commit another crime in the future. *See* Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, JSTOR Daily (July 18, 2022) <https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/#:~:text=In%202021%2C%20a%20much%20larger,that%20didn't%20involve%20imprisonment.>

PERFORMANCE IMPLICATIONS

The Administrative Office of the Courts anticipates HB491 would impact performance on two of its measures:

- Cases disposed of as a percent of cases filed, and
- Percent change in case filings by case type.

JT/rl/al/ne