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FISCAL IMPACT REPORT

SPONSOR: Tsosie DATE TYPED: 03/01/01 HB _____
 SHORT TITLE: Law Enforcement Safe Pursuit Act SB 633
 ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act, partially duplicates HB 53 for crime of fleeing officer.

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY01	FY02			
		See Narrative	Recurring	Intensive Supervision Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 Corrections Department (CD)
 Children Youth and Families Department (CYFD)
 NM Public Defender (NMPD)

SUMMARY

Synopsis of Bill

SB633 requires law enforcement agencies to develop protocol for high speed pursuit and to collect data on such pursuits; requires additional training for officers about high speed pursuits; and creates the crime of Aggravated Fleeing of an Officer for offenders who cause such pursuits.

Significant Issues

AODA reports whenever specific protocols are enacted, the arena is opened for lawsuits if there is any variance from the protocol. However, the collection of data and training is much needed to identify the various issues surrounding pursuit of offenders in situations that may endanger others. The bill currently requires that the driving “endangers the life of another person” which may need to be changed to “may endanger the life of another person” to cover situations where no other persons, except the officer (which if they are included negates this concern) is endangered. This allows for chases in rural areas, late at night, etc.

PERFORMANCE IMPLICATIONS

According to the AG, the data collection and written policy portions of the bill can be expected to have only minor impact on the AG's office, whose investigators are only rarely involved in high speed pursuits. Subsection 4(E), which requires that 8 of the currently-required 40 hours of in-service training be devoted to the topic of high-speed pursuits, reduces training in other areas by the same amount.

The bill will impose more significant burdens on police and sheriff's departments, and the State Police, as well as on the Traffic Safety Bureau of the State Highway and Transportation Department, and on the Director of the New Mexico Law Enforcement Academy. All of these entities will be required to prepare considerable paperwork on a regular basis.

In addition, the written policy requirements (section 5) would essentially eliminate the discretion of law enforcement agencies to engage in high speed pursuits, by permitting such pursuits only in narrowly-circumscribed circumstances. This will undoubtedly have some impact on the performance of those agencies.

The written policy could be used as evidence against the state in any lawsuit arising from a high speed pursuit.

The bill may affect the performance of the Public Safety Support Program if the DPS Training Division is required to provide the in-service training on an ongoing basis. Output, efficiency and quality measures are implicated.

Further, double reporting will mean fewer officers on the road impacting performance measures. Having both the pursuing officer and the pursuit supervisor write separate reports will duplicate reports and report time. This can have an impact on all law enforcement program measures.

FISCAL IMPLICATIONS

The AG reports the bill would have a relatively minor fiscal impact on the AG's office for the reasons given in the above section. It would have a more substantial fiscal impact on the other agencies mentioned above. The bill contains no provision for appropriations to pay these costs.

In addition, the detailed written policy required by section 5 could be used as evidence against the state in any tort claim arising out of a high speed pursuit, and may have some indirect (and difficult to quantify) fiscal impact in that way.

CD reports there is no appropriation in the bill to cover the increase in costs that will result to CD due

to increasing (Aggravated Fleeing A Law Enforcement Officer from a misdemeanor to a felony. Since this conduct is currently classified as a misdemeanor offense, most persons who currently receive a sentence of incarceration would likely be sentenced to a county jail rather than a CD prison. Since this conduct would now be classified as a felony, any sentence of imprisonment would likely be served in a CD prison. For those offenders who are sentenced to probation, this bill would likely increase the period of probation from one (1) year to a period of eighteen (18) months.

CD roughly estimates that there will be approximately five (5) to ten (10) convictions for this felony offense each year. The Department further roughly estimates that approximately one-half (½) of the persons convicted of the felony offense will be sentenced to prison and approximately one-half (½) will receive a sentence of probation.

The private prison annual cost of incarcerating an inmate based upon Fiscal Year 00 actual expenditures is \$21,670 per year for males. The cost per client to house a female inmate at the privately operated facility in Grants is \$24,348 per year. Any net increase in inmate population will be housed at a private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,536 per year. The cost per client in Intensive Supervision programs is \$3,922 per year. The cost per client in department-operated community corrections programs is \$5,519 per year. The cost per client in privately-operated community corrections programs is \$10,724 per year.

DPS reports passage of the bill will result in increased costs to this agency that cannot be absorbed. The following costs are estimated:

- 1) Development of a basic and in-service curriculum to meet bill requirements - \$15.0
- 2) Delivery of basic training 6.0
- 3) Delivery of in-service training 65.0

The \$15.0 development costs are a one-time cost. The \$71.0 training delivery cost would be a recurring cost. In the basic curriculum it is assumed that 8 of the 16 hours of training required in the bill are already being delivered or can be absorbed into the existing curriculum. The additional 8 hours would require an extra day of training. The costs associated with this extra day include the room and board for the student and the instructor time. The estimate in #3 takes into account the in-service training requirement is a biennial requirement. Therefore, one-half of the 5,200 officers in the state would need to be trained each year. Existing advanced training staff (two instructors) are already booked full-time to deliver training. An additional mandate to deliver one 8 hour class to 2,600 officers per year would require 130 classes per year being delivered (estimating class size at 20 students). The small class size is necessary to accommodate practical exercises. This would average 3 courses per week, requiring at least one extra FTE. FTE, to include salary, benefits, travel, per diem, etc. is \$65.0, a recurring cost. Additional costs to purchase training vehicles and equipment have not been estimated.

This legislation could have a positive impact on future insurance costs if it succeeds in reducing injuries resulting from high speed pursuits. It should be noted, however, that the existence of detailed legislative requirements sometimes gives rise to lawsuits where not all the provisions of law are followed in policy. Allegations of policy nonconformity to the legislative requirements could give rise to more potential liability even though the inconsistencies in the policy were not the actual cause of any injury.

ADMINISTRATIVE IMPLICATIONS

The bill would probably have only relatively minor administrative effect on the AG. The effect would result from the reporting and in-service training requirements, as well as the one-time effort of drafting

a written policy as required by Section 5.

CD reports this bill will result in a slight to moderate increase in the administrative burden upon department prison and probation personnel due to the increase in the number of persons sentenced to prison and the longer periods of probation. Obviously, this will result in a slightly larger prison population and probationary caseload. Ultimately, CD will be unable to absorb the additional administrative burden and additional F.T.E. may be required in the long-term.

DPS reports the bill would have short-term impact in requiring the development of the basic and in-service curriculum. The long-term impact is in the continual delivery of this training to every law enforcement officer at least every other year. This would require, at minimum, one additional FTE to deliver this training on an ongoing basis.

There are no provisions for non-compliance with this training. It is therefore assumed that an officer may be de-certified for non-compliance.

This bill paves the way for the much needed rectification of the issue of high speed pursuits. By establishing the fleeing of an officer as a felony offense, this legislation supplies the bite that will perhaps halt many pursuits before they begin.

RELATIONSHIP

AODA reports this bill partially duplicates and partially conflicts with HB 53. Both create a crime of aggravated fleeing of an officer, however, this bill only requires “careless driving” while HB 53 requires “reckless driving”. The crimes are identical in all other respects.

The AG reports Section 6, creating a new fourth degree felony of aggravated fleeing a law enforcement officer, supplements existing NMSA § 30-22-1, which makes it a misdemeanor to flee a law enforcement officer.

Subsections 4(A) and (B), requiring additional training at the Academy, supplements existing NMSA § 29-7-1, et seq., which currently requires 400 hours of training but leave the design of the program up to the Academy board.

Subsections 4(C) and (D), requiring specific in-service training of certified officers, supplements existing NMSA § 29-7-7.1, which requires 40 hours of training every 24 months but leaves the design of the program up to the board.

DPS reports this bill conflicts with the powers and duties of the New Mexico Law Enforcement Academy Board to develop and implement a planned program of basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis, Section 29-7-4.B. The Board establishes the minimum standards of training and the training curriculum for all law enforcement officers and radio dispatchers in the state. In doing so, the Board relies on subject matter experts and job task analysis to validate the curriculum that is approved. In fact, on March 1, 2001 the Board will conduct a public hearing on recommended changes to the basic police officer training curriculum taking it from 640 hours to 800 hours. Any individual or group that has a specific interest in the training that a law enforcement officer receives may request the Board to consider their issue.

Currently, Section 30-22-1 (C) makes it a misdemeanor to refuse to stop a vehicle when so ordered by a police officer. Also, if Section 30-22-1 (C) is violated resulting in the death or injury of a human being, the felonies of homicide by vehicle or great bodily injury by vehicle are committed. In order to maintain

these violations, the proposed felony level of the offense would have to be correlated with existing Section 30-22-1 (C).

TECHNICAL ISSUES

According to the AG, Section 6, creating the new felony offense of aggravated fleeing a law enforcement officer, has a mens rea requirement of "willfully and carelessly." The word "carelessly" is not commonly encountered in criminal statutes, but would seem to imply lack of due care, or negligence. However, willfulness and negligence are usually thought of as contrasting states of mind. It is difficult to see how the same action could be simultaneously willful and careless.

The phrase "appropriately marked law enforcement vehicle" is not defined. The two most common insignia of police cars are decals on the doors and emergency lights. What if the vehicle has one but not the other? How about a vehicle with decals but with the emergency lights mounted elsewhere than on top, such as behind the grill? An argument could be made that the latter vehicle, although "marked", was not marked "appropriately."

Also, does "appropriately marked law enforcement vehicle" in Section 6 mean the same thing as the "authorized emergency vehicle" of Section 2?

Section 5 does not define "violent felony".

The AG suggests Section 6 should be amended to require either willfulness or a lack of due care, but not both. Also in Section 6, "appropriately marked law enforcement vehicle" should be defined.

AODA reports there are potential legal issues surrounding the use of careless driving. The New Mexico Courts have consistently rejected prosecutors' attempts to use careless driving as a predicate for a felony. However, there have been no attempts by the legislature to change this stance and with a statute, such as this, specifically allowing this predicate under narrow circumstances, the reaction of the Courts may be quite different.

DPS suggests fully fund the advanced training efforts of the Department of Public Safety Training Division without placing a revenue requirement on them. More advanced training programs that are offered on a regional basis and free of charge will encourage higher participation by all law enforcement officers and agencies statewide and eliminate the 12 month grace period allowed in Section 29-7-6.B NMSA 1978.

OTHER SUBSTANTIVE ISSUES

The AG indicates the bill conflicts with the existing policy of granting discretion to the Law Enforcement Academy Board to design law enforcement training programs.

According to AODA, by collecting data and providing better and more specific training to officers, this bill may improve the situation faced by officers when confronted with possible high speed pursuits. The addition of a felony offense for those who engage officers in such pursuits is long needed.

CYFD indicates the bill does not give a deadline for the submission of high speed pursuit policies from law enforcement agencies to the Academy and the Traffic Safety Bureau.

NMPD reports the proposed legislation gives almost unbridled discretion to an officer to determine whether the activity of driving a car – already inherently dangerous – rises to the level of 'aggravation'

when and if a peace officer gives an “audible or visual signal to stop.” Motor vehicles are dangerous instruments that, when mishandled ‘willfully and recklessly’, negligently, or even driven properly, kill tens of thousands people every year – far more than their notorious counterparts, guns. Further, the officer’s discretion is keyed by none other than the officer’s subjective judgement that the driver was given a recognizable ‘audible or visual signal’ to stop. Hand signals at night or other sight/noise signals to the visually or hearing impaired, the innocently distracted, or even the not-very-observant, make this statute problematic. The proliferation of cell phones alone potentially extends the reach of the Bill into a class of citizenry it probably did not intend to effect. In addition, the statute makes no distinction between true emergencies and driving that might otherwise, under the circumstances, be construed as acceptable (medical emergencies, for instance). There simply appears to be no connection between the officer’s determination of what constitutes willful and reckless and the same officer’s judgement that an appropriate and recognizable signal to stop had been given.

This bill will require a twenty-year veteran officer to attend the same training program during his/her career at least ten times. In addition, the requirement is placed upon all certified officers, regardless of rank or assignment. Many officers will never become involved in a high-speed pursuit because of their rank or assignment. However, it is recognized that every officer does have that potential exposure.

In addition, the 40 hour in-service training requirement established in Section 29-7-7.1 NMSA 1978 is further detailed in the New Mexico Law Enforcement Academy Board Rule 10 NMAC 29.7 that requires 12 hours of maintenance training, 20 hours of advanced training, and 8 hours of Board mandated training. Dedicating 8 of the 40 hours to pursuit training every two years appears to be an excessive amount considering all the other issues that face law enforcement. Of equal concern are the legal updates that officers should be aware of, the use of force decision making and application process, critical incident response training, domestic dispute response training, weapons of mass destruction response, and the list goes on. There are many critical areas that officers should be trained in on an ongoing basis, yet the resources to develop, provide and attend this training are minimal.

There is a loophole in this legislation and its intended outcome. Currently, an officer may work in a commissioned law enforcement position for 12 months without receiving training or certification. It is often the young and inexperienced officers that engage in high-speed pursuits. There are several instances in New Mexico where a non-certified officer has become involved in a pursuit that ended with tragic consequences. This legislation would not address those officers that are currently allowed to work up to 12 months in a commissioned capacity without being trained or certified.

Further, under definitions, a definition for what constitutes an authorized emergency vehicle is needed. The vagueness of the current definition could allow for the complaint that has surfaced in the past over unmarked vehicles, or whether overhead emergency lights are the only acceptable method to show an authorized vehicle (as opposed to a “slick top” unit). Secondly, by using the wording, “actively attempting to avoid apprehension by exceeding the speed limit” the legislation has left out the many other pursuits that occur that do not, in fact, exceed the speed limit but continue on with no intention of the pursued vehicle to surrender to the law enforcement officer. The example of O.J. Simpson’s pursuit first comes to mind.

The legal problems raised by addressing high speed pursuits as a matter of legislation will relate to state-wide liability concerns, instead of allowing individual departments to address the concern as it relates to their area of jurisdiction.

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