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FISCAL IMPACT REPORT



SPONSOR: Heaton DATE TYPED: 01/31/02 HB 164

SHORT TITLE: Aggravated Fleeing an Officer SB _____

ANALYST: Hayes

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY02 | FY03 | FY02 | FY03 | | |
| | NFI | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB138

SOURCES OF INFORMATION

- Administrative Office of the Courts (AOC)
- Taxation and Revenue Department (TRD)
- Attorney General's Office (AGO)
- Public Defender Department (PDD)
- Department of Public Safety (DPS)
- New Mexico State Highway and Transportation Department (SHTD)

SUMMARY

Synopsis of Bill

The bill adds a new section to the Criminal Code regarding aggravated fleeing of an officer and providing for penalties. A person is guilty of aggravated evading of an officer if a person drives his vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others, without due caution and circumspection and at a speed or in a manner which may endanger another person or property, after being given a visual or audible signal to stop, whether by hand, voice, emergency light, flashing light, siren or other signal by a uniformed officer in an appropriately marked police vehicle.

The penalty for committing aggravated evading of an officer is a fourth degree felony.

The effective date of this act is July 1, 2002.

Significant Issues

1. Currently, “fleeing” is considered a misdemeanor offense. As a fourth degree felony, “aggravated fleeing an officer” would carry a basic sentence of 18 months imprisonment under the current sentencing statutes.
2. Frequently, these “fleeing” incidents result in death or serious injury to other motorists. It might also be noted that a person who commits this crime and kills someone in the process may be subject to prosecution for felony-murder, a capital offense, under NMSA 1978, § 30-2-1 (A) (3) (1994), if the prosecution can prove some general intent to kill. *State v. Ortega*, 112 N.M. 554 (1991).
3. HB164 empowers a police officer to determine what constitutes ‘willful driving without due caution and with wanton disregard.’

FISCAL IMPLICATIONS

There is no fiscal impact.

ADMINISTRATIVE IMPLICATIONS

Both the courts and the Public Defender Department state that the impact of this bill on their respective agencies would be proportional to the enforcement of this law. Typically, new laws and amendments to existing laws have the potential to increase caseloads in the courts. According to PDD, creating a new felony from what was previously a misdemeanor could impact the department’s obligation to try matters that formerly have been pled or settled with less punitive terms.

RELATIONSHIP

SB138 enacts the Law Enforcement Safe Enforcement Safe Pursuit Act regarding high-speed chases.

TECHNICAL ISSUES

The phrase “by a uniformed officer in an appropriately marked vehicle” could be problematic if this legislation is approved as written. It seems to suggest that the new law would not apply in cases where officers pursue suspects in unmarked vehicles. To clarify and broaden the intent, here is suggested language for page 2, line 1: “... by any sworn law enforcement officer in the legal pursuit of his/her duties.”

POSSIBLE QUESTIONS

1. What are the legal and social goals of requesting that the crime of “aggravated fleeing an officer” be defined and prosecuted as a fourth degree felony?

CMH/ar