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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/09
 SPONSOR HJC LAST UPDATED 03/06/09 HB 31/HJCS
 SHORT TITLE Motor Vehicle Theft and Embezzlement SB _____
 ANALYST Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	\$0.01	\$0.01	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but could be moderately substantial	Indeterminate but could be moderately substantial	Indeterminate but could be moderately substantial	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Taxation and Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for House Bill 31 moves the crimes of unlawful taking of a vehicle or motor vehicle (UTMV), receiving or transferring stolen vehicles or motor vehicles, injuring or tampering with a motor vehicle, altering or changing engine or other numbers from the Motor Vehicle Code, NMSA 1978, Section 66-3-501 et. seq. to the regular Criminal Code Larceny Section 30-16-1 et.seq. N.M.S.A.

Additionally, the bill would primarily create two new felony crimes: embezzlement of a vehicle or motor vehicle and fraudulently obtaining a vehicle or motor vehicle. The severity of both new

felonies (fourth, third or second degree felony) would depend on whether the crime is a first, second, third or subsequent offense with the basic sentences being 18 months, 3 years, and 9 years respectively.

Similarly, the bill would also recompile and amend Sections:

1. 66-3-505 NMSA 1978 regarding the crime of receiving or transferring a vehicle such that the severity of that felony crime (fourth, third or second degree felony) would also depend on whether the crime is a first, second, third or subsequent offense with the basic sentences being 18 months, 3 years, and 9 years respectively;
2. 66-3-505 NMSA 1978 regarding injuring or tampering with a motor vehicle such that the crime is a misdemeanor;
3. 66-3-508 NMSA 1978 regarding altering or changing engine or other numbers of a stolen vehicle or motor vehicle such that the crime is a fourth degree felony.

The bill would also amend the Racketeering Act to define racketeering to include the crimes of unlawful taking of a vehicle or motor vehicle, embezzlement of a vehicle or motor vehicle, fraudulently obtaining a vehicle or motor vehicle, receiving or transferring stolen vehicles or motor vehicles, and altering or changing the serial number, engine number, decal or other numbers or marks on a vehicle.

FISCAL IMPLICATIONS

The New Mexico Corrections Department (NMCD) notes that this bill could increase the department's costs by causing indeterminate but possibly moderately substantial increases in the inmate population and probation/parole caseloads due to the enhance penalties without any corresponding appropriation. The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility. The cost per client in probation and parole for a standard supervision program is \$1,205 per year. The cost per client in an intensive supervision program is \$3,848 per year. The cost per client in community corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

There may be some very minimal increases in revenue to NMCD (caused by a minimal amount of revenue generated by the probation/parolee supervision fees paid during the probation/parole period by offenders convicted of these new or expanded crimes). However, any revenue increases would be more than offset by the costs associated with imprisoning and/or supervising these new felony offenders.

The Administrative Office of the District Attorneys (AODA) notes that this bill may increase prosecutor and court costs.

The Administrative Office of the Courts (AOC) notes there may be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Additionally, indigent defendants are entitled to public defender services. These additional costs are not capable of quantification.

SIGNIFICANT ISSUES

HJC substitute eliminates the penalty formula based on the value of the vehicle, but instead provides progress penalties based on the number of offenses. As the number of offenses increase, the length of the sentence increases.

By creating two new felony crimes, expanding felony penalties and expanding the definition of racketeering, more individuals may be convicted of these new and expanded felonies and sentenced to prison and/or probation or parole with NMCD. Predicting how many new felony convictions or sentence enhancements will occur is difficult to estimate. However, this bill is likely to lead to a minimal to moderate number of new felony convictions.

According to the AODA, youthful offenders are not “sentenced”, nor do they receive “deferred” sentences; and, there are limits on usefulness of time that can be imposed for a youthful offender (i.e., no point in time given past age 21, as there is no place to put them in the event of a revocation of that sentence). Right now, by Supreme Court interpretation, a juvenile offender may be sentenced only to not more than two years or until no older than age 21; this may require some compatibility checks between this proposed legislation and what the Court has ruled.

PERFORMANCE IMPLICATIONS

NMCD notes that this bill would negatively impact the ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if it caused more than just a few additional convictions.

Any DA’s office deciding to enforce this in all cases may have juvenile cases taking far more time to go through the system. With the discretion, DA’s could choose to use it only in the more serious cases that are likely to go to trial.

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

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

ADMINISTRATIVE IMPLICATIONS

If the bill increases the inmate population or probation/parole caseloads by a large number, it will significantly increase the workloads of current prison and probation/parole staff. At some point, NMCD would have to employ more FTEs to handle the increased workloads.

DUPLICATION

The bill is a duplicate of SB26.

TECHNICAL ISSUES

The AODA notes that there are errors in terminology regarding sentencing and deferrals vis a vis youthful offenders.

The AOC acknowledges that in prior versions of this bill containing the same language, the Public Defender Department has noted that there may be some state constitutional difficulties with the bill's deletion of the provision in Section 66-3-504 that the district court has exclusive jurisdiction over the offenses proscribed in this section of the statute. Since the crimes enumerated are felony offenses, jurisdiction is properly in the district court. See N.M. Const. Art. 6, § 13 (the district court shall have original jurisdiction in all matters and causes not excepted in this constitution).

OTHER SUBSTANTIVE ISSUES

Embezzlement consists of a person embezzling or converting to the person's own use a vehicle with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle. Fraudulent obtaining consists of a person intentionally misappropriating or taking a vehicle that belongs to another person by means of fraudulent conduct, practices or representations.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the Department of Public Safety (DPS), enacting this bill will increase the penalties, thus creating a deterrent for stealing motor vehicles. If this bill is not passed the penalties will stay the same.

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