# F I S C A L  I M P A C T  R E P O R T

**SPONSOR** Youngblood **ORIGINAL DATE / LAST UPDATED** _____ **HB** 43

**SHORT TITLE** Penalties for Dealing Food Stamps **SB** _____

**ANALYST** Dunbar

## APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---|---|---|---|
| **FY15** | **FY16** | | |
| | NFI | | |

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

## SOURCES OF INFORMATION

Responses Received From
Administrative Office of the Courts (AOC)
Human Services Department (HSD)
Public Defender Department (PDD)

## SUMMARY

Synopsis of Bill

HB 43 makes changes to section 30-16-7, NMSA 1978 which criminalizes unlawful dealing in food coupons (food stamps) and WIC checks. Specifically, the bill aggregates the unlawful sale of food stamps and WIC checks over a period of up to twelve months for the purposes of classifying the severity of the crime. The total value of the unlawful dealing over a year would be added up to determine the degree of the crime. The degrees range from a petty misdemeanor for sales under $250 up to a second degree felony for sales exceeding $20,000 in the aggregate.

## FISCAL IMPLICATIONS

AOC states that a minimal fiscal implication would be foreseeable from updating statute books and online legal resources. Considering the legal issue stated below, a minimal increase in staffing costs would be associated with the litigation of the issue in the courts.

According to PDD there are likely to be few prosecutions at the increased level for these offenses, as little impact is envisioned. If PDD continues to contract conflict and overflow cases

on the basis of the level of felony charged, higher-penalty felonies would cost more to defend. Moreover, higher-penalty cases (while often pled down) are somewhat more likely to go to trial. While it is likely that PDD would be able to absorb some increase in the penalty severity of "unlawful dealing in food stamp" cases under the proposed law.

## SIGNIFICANT ISSUES

According to HSD, 97% of all suspicious SNAP transactions in New Mexico identified by the Food and Nutrition Service during SFY2013 are less than the $500 threshold mandated by statute. Therefore, without the ability to aggregate dollar values for incidents of SNAP trafficking, there is little potential for criminal prosecution. Without a criminal prosecution, there is no way to impose disqualification from the food stamp program for this category of transactions. There is also no way to recover misused benefits by recipients who are otherwise eligible to receive these benefits. No criminal prosecution, no disqualification, and no restitution present no deterrent to committing SNAP trafficking.

AOC notes that there exists a legal doctrine called "single criminal intent" related to crimes of larceny. The doctrine states that crimes of larceny will be treated as separate if the evidence proves each act of larceny was committed with separate intent. For instance, someone may steal a television from a big box store in January and resell it to a crime organization, then steal a mobile phone from a drug store the subsequent December for personal use. The time span, difference in locations, difference in items stolen and difference in ultimate is arguably all evidence of separate intent for each crime.

The doctrine of single criminal intent has been applied to charges under section 30-16-7 in New Mexico in the case of *Sate v. Johnson*, 121 NM 337 (Ct. App. 1995). The question in *Johnson* was not precisely whether multiple sales of food stamps or WIC checks could be aggregated for a higher level of punishment. Yet *Johnson* makes it clear that section 30-16-7 implicates this doctrine.

The New Mexico cases use the single criminal intent doctrine to help determine the legislative intent of a criminal statute. The assumption is that the Legislature would have intended to not aggregate larcenous actions in order to impose harsher sentences if the evidence is that the actions were committed with separate intent. That said, because the single criminal intent doctrine is a way to understand legislative intent, the courts have deferred to the Legislature's alteration of the doctrine. Such cases as *State v. Frazier*, 142 NM 120 (2007), and *State v. Bernál*, 140 NM 644 (2006), make it clear that it is the Legislature that establishes the severity of punishment. If the Legislature chooses to aggregate separate criminal actions for the purposes of punishment, the courts should defer.

HB 43 effectively states, according to AOC, that regardless of any evidence that distinguishes a perpetrator's intent among separate actions during a twelve month period, punishment is to be meted on the aggregate amount of all the actions. If the foregoing analysis is applied to HB 43, it would seem likely that the courts would defer to the changes the bill seeks to make. A rare exception may occur by application of the prohibition against cruel and unusual punishment. Courts will stop criminal consequences that are unreasonably disproportionate to the crime or crimes committed. This, again, is rare, as the courts generally defer to legislative intent. *State v. Ortega*, 112 NM 554 (1991). It is unclear whether there may be a particular situation in which HB 43 is applied such that a court would declare the result to be cruel and unusual punishment.

## ALTERNATIVES

The threshold for a felony conviction could be reduced to mirror Title 7 U.S.C., Section 2024: Violations and Enforcement, to a single offense of more than $100.

BD/aml