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FISCAL IMPACT REPORT

ORIGINAL DATE 1/18/2017

SPONSOR White/Gonzales LAST UPDATED _____ HB _____

SHORT TITLE Crime of Cargo Theft SB 74

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Administrative Office of the Courts (AOC)

Law Offices of the Public Defender (LOPD)

SUMMARY

Synopsis of Original Bill

SB 74 defines cargo theft as a new crime meaning the theft of commercial goods in transport, or the vehicle transporting the commercial goods, when the total value is \$1,000 or more. Cargo theft is defined as a second degree felony for which the mandatory punishment is nine years imprisonment accompanied by a fine not to exceed the fair market value of the stolen property and the cost to recover it. The Administrative Office of the Courts (AOC) states that, currently, this type of crime is under regular theft and auto burglary statutes, with the standard sentencing provisions of Section 31-18-15 NMSA 1978.

FISCAL IMPLICATIONS

The Law Offices of the Public Defender (LOPD) states any increase in the number of prosecutions brought about by the cumulative effect of the bill along with all other proposed criminal legislation could strain the indigent defense fund and require additional funding to maintain compliance with constitutional mandates.

However, LOPD states the conduct targeted is already illegal under the existing statutes, although generally at a lesser penalty level, and does not represent an especially prevalent mode of criminality charged in New Mexico courts. LOPD goes on to explain that there are likely very few prosecutions for these offenses and it is likely that the LOPD would be able to absorb some cases under the proposed law.

LOPD also explains “if more higher-penalty trials and litigation of sentencing phases (stemming from the ambiguous penalty in the proposed legislation) result, LOPD may need to hire more trial attorneys with greater experience. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation.” LOPD states an Associate Trial Attorney’s mid-point salary, including benefits, is \$93.2 thousand. “Assessment of the impact on the LOPD with enactment of this bill would be necessary after the implementation of the proposed higher-penalty scheme.”

The AOC explains there will 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 additional actions filed under the new exception to the ten year statute of limitation. 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. AOC is currently working on possible parameters to measure resulting case increases.

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. An increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD’s general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate’s needs.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage, losses in future earnings, and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.

SIGNIFICANT ISSUES

The Administrative Office of the District Attorney (AODA) states “the penalty proposed in SB 74, a second degree felony, is - for the most part - significantly more severe than the existing law for other theft offenses ... anyone who might be charged under SB 74 will almost certainly challenge it because of the variance in penalties. In many cases the specific statutes regarding unlawful taking of a motor vehicle, theft of livestock and theft of a firearm may also be claimed as applicable instead of the more general theft of cargo statute proposed by SB 74.” For example, other theft offenses carry a fourth degree felony offense when the value of property stolen is more than \$500 but less than \$2,500. When the value of property stolen is more than \$2,500 but less than \$20,000, the offense is a third degree felony. AODA also states the bill “would replace

the potential fine of up to \$10,000, which is applicable to most second degree felony crimes, with a fine ‘...in an amount of up to the fair market value of the property stolen and the cost of recovering the property.’ That would require the court to determine those values after a conviction had taken place under the statute and might delay sentencing. Determining fair market value and cost of recovering the property will very likely be contested. There is no guidance on how those amounts should be calculated such as, for example, including the salaries paid to police involved in apprehending any suspects, proving the theft and recovering the property.”

The AOC points out the penalty provisions of SB 74 appear to be mandatory and not subject to judicial discretion as to basic sentence and fine as currently provided under Section 31-18-15.

Presently, according to the LOPD, “the targeted conduct is already illegal and the degree of crime of a theft is dependent upon the value of the goods stolen. The proposed legislation would change that for theft of cargo worth more than \$1,000, making any such theft a high second degree felony bearing an onerous - and ambiguous - sentence. The provision for ‘the cost of recovering the property’ is likely to bring about litigation at the sentencing phase.”

PERFORMANCE IMPLICATIONS

The AOC is 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 percentage of cases filed; and percentage change in case filings by type.

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