

SUMMARY

Synopsis of SFL Amendment

Senate Judiciary Committee Substitute for Senate Bill 26 as amended by the Senate Judiciary Committee as amended by the Senate Floor makes the following changes to the bill.

- It modifies the definition of embezzlement of a vehicle by inserting the word “fraudulent” before the word “intent” as it refers to the individual embezzling the vehicle.
- It removes the sentence from the definition of embezzlement of a vehicle that would make each occurrence a separate incident a separate and distinct offense.
- It deletes the language that would have allowed the law enforcement agency that recovered an embezzled vehicle or parts to use the vehicle or parts, or if they are unusable to destroy them.

Synopsis of SJC Amendment

Senate Judiciary Committee Substitute for Senate Bill 26 as amended by the Senate Judiciary Committee deletes “PROVIDING FOR SENTENCING ENHANCEMENTS IF AN UNLAWFULLY OBTAINED VEHICLE OR MOTOR VEHICLE IS USED IN THE COMMISSION OF A FELONY” from the title of the bill.

Synopsis of Original Bill

Senate Judiciary Committee Substitute for Senate Bill 26 as amended by the Senate Judiciary Committee recompiles Section 66-3-504 (in the Motor Vehicle Code, regarding the unlawful taking of a vehicle or motor vehicle) as Section 30-16D-1 (Criminal Code). 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 the value of the applicable vehicle embezzled or fraudulently obtained.

Similarly, the bill would also recompiles and amends Sections 66-3-505, 506, and 508 NMSA 1978 regarding the crime of receiving or transferring or injuring or tampering with or altering or changing engine or other numbers of a stolen vehicle or motor vehicle such that the severity of that felony crime (fourth, third or second degree felony) would also depend on the specified value of the applicable stolen vehicle. Under the current law, this crime only constitutes a fourth degree felony. Under this bill, if the value of the applicable vehicle is more than \$20,000, it becomes a second-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.

Finally, the bill would amend the law to alter the basic sentence of felony offenses to add one year to the sentence when it is shown that the motor vehicle or vehicle unlawfully taken, embezzled or fraudulently obtained was used in the commission of a noncapital felony. The one year enhancement increased to three years when it is shown that the vehicle or motor vehicle was used in the commission of a second and subsequent noncapital felony.

Senate Bill 26 differs from the Senate Judiciary Committee Substitute for Senate Bill 26 in the following areas;

The original bill amended 30-16D-1 NMSA 1978 by adding specific thresholds of vehicle value, rather than the number of prior offenses to determine the severity of the criminal offense.

The original bill included a specific sentence for the new section 30-16D-3 titled “FRAUDULENTLY OBTAINING A VEHICLE OR MOTOR VEHICLE” and specified a penalty; the Senate Judiciary Committee Substitute determines the severity of the violation by the number of prior offenses.

FISCAL IMPLICATIONS

The New Mexico Corrections Department (NMCD) notes that this bill could increase the department’s costs by causing minimal to moderate increases in the inmate population and probation/parole caseloads 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, as juveniles who choose to fight this are likely to demand a jury trial.

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

Currently the penalty for the unlawful taking of a motor vehicle and receiving a stolen vehicle is a fourth degree felony. This Bill will increase the penalty from a fourth to a third felony for vehicles with a value between \$2,500 and \$20,000. Additionally the penalty will increase to a second degree felony for vehicles with a value of more than \$20,000.

By creating two new felony crimes, adding sentence enhancements, expanding another felony to make it a second-degree felony in certain situations 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). The portion of this bill that adds extra time to a sentence will increase the number of juvenile cases requiring adjudication, rather than a plea, which will take up more prosecutor and defense attorney time. 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. However, this rule also seems to allow a great deal of discretion in the possible charging, which may avoid the issue.

The AOC¹ notes that as penalties increase, potential imprisonment tends to inspire defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

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.

DUPLICATION

Senate Bill CS/26/aSJC is a duplicate of House Bill 31.

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.

The DA's can still prosecute the unlawful takings, etc. under existing law, but there will be no extensions of time beyond that already provided for in the Children's code, and no additional penalties given to adult offenders.

CH/svb:mc

¹ The AOC analysis adds the following disclaimer.

**THIS BILL ANALYSIS IS SUBMITTED BY THE AOC AND SHALL NOT BE
CONSTRUED AS A SUBMISSION BY THE SUPREME COURT OR ANY OTHER COURT.**