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## FISCAL IMPACT REPORT

SPONSOR: Tsosie DATE TYPED: 03/16/03 HB \_\_\_\_\_  
 SHORT TITLE: Law Enforcement Safe Pursuit Act SB 431/aSJC  
 ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$172.0	Recurring	General Fund/OSF
			\$79.0	Non-Recurring	General Fund/OSF
			Significant (See Narrative)	Recurring	General Fund/OSF

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Department of Public Safety (DPS)  
 Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 Attorney General (AG)  
 State Highway and Transportation Department (SHTD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 431:

- Provides that the State Highway and Transportation Department (SHTD), rather than the Traffic Safety Bureau of SHTD as provided by the original bill, shall receive information regarding each high speed pursuit and policies governing such pursuits; and
- Strikes the section mandating that SHTD submit an annual report and a study to the director of the Law Enforcement Academy and to all state, county and municipal law enforcement agencies.

### FISCAL IMPLICATIONS

Based on SHTD's projections, eliminating the requirement that the department submit an annual report and study reduces the recurring costs to the department by approximately \$86.0, making

the total recurring cost to SHTD approximately \$172.0.

## **RELATES**

Relates to/Partially duplicates HB 30/aHJC. Differences are:

- SB 431/aSJC requires that eight hours of in-service law enforcement training be spent on high speed pursuits, and HB 30/aHJC requires four hours.
- SB 431/aSJC requires that state, county and municipal law enforcement officers submit detailed reports on every high speed pursuit conducted, and HB 30/aHJC contains no such requirement.

The original SB 431 duplicates HB 87.

### Synopsis of Original Bill

Senate Bill 431 enacts the Law Enforcement Safe Pursuit Act, requiring law enforcement agencies to formulate policies and develop and incorporate training regarding high speed pursuits. The bill creates the crime of aggravated fleeing a law enforcement officer, making it a fourth degree felony.

“High speed pursuit” is defined as an attempt by a law enforcement officer in an authorized emergency vehicle to apprehend an occupant of a motor vehicle, the driver of which is actively attempting to avoid apprehension by exceeding the speed limit.

Every state, county and municipal law enforcement agency shall report data pertaining to each high speed pursuit to the Traffic Safety Bureau of the State Highway and Transportation Department (SHTD), and no later than October 1, 2004 and October 1 of each subsequent year, SHTD shall provide an annual report to the director of the New Mexico Law Enforcement Academy and to all state, county and municipal law enforcement agencies regarding reports of high speed pursuits submitted during the previous year. By December 31, 2003, SHTD shall submit a study of high speed pursuits in New Mexico to the director of the New Mexico Law Enforcement Academy.

The bill requires that no later than December 31, 2004, the New Mexico Law Enforcement Academy Board develop and incorporate into the training program at least sixteen hours of instruction regarding the safe initiation and conduct of high speed pursuits.

The bill requires that the chief law enforcement officer of every state, county and municipal law enforcement agency establish and enforce a written policy regarding high speed pursuits.

The bill enacts a new section of the criminal code creating the crime of aggravated fleeing a law enforcement officer, a fourth degree felony.

### Significant Issues

This bill details requisite components, including instructional hours and content, of the curriculum at the Law Enforcement Academy. With the exception of the statutory requirement that basic law enforcement training include a section on domestic abuse incident training, the Legislature has traditionally operated under the theory that the Law Enforcement Academy Board de-

termines the Academy's curriculum. Mandating the number of hours to be spent in a given area of training is unprecedented.

DPS notes the bill conflicts with the powers and duties of the New Mexico Law Enforcement Academy Board to develop and implement a planned program of basic law enforcement training and in-service law enforcement training, a portion of which may be conducted on a regional basis, Section 29-7-4.B NMSA 1978. The Board establishes the minimum standards of training and the training curriculum for all law enforcement officers and radio dispatchers in the state. In doing so, the Board relies on subject matter experts and job task analysis to validate the curriculum that is approved. On March 1, 2001 the Board recommended changes to the basic police officer training curriculum (including Emergency Vehicle Operations) taking it from 640 hours to 800 hours. These changes were implemented July 1, 2002.

The bill includes specific guidelines for policies governing high speed pursuits, effectively limiting agency and officer discretion.

The Act would establish a cumbersome reporting requirement for officers involved in high speed pursuits. The reporting requirement would have a significant impact on police and sheriff's departments, the State Police, the Traffic Safety Bureau of the SHTD and the Law Enforcement Academy. Requiring officers to produce reports on all high speed pursuits would likely have the unintended effects of increasing the emphasis placed on administrative tasks in law enforcement agencies and reducing the number of officers on the road.

### **FISCAL IMPLICATIONS**

Although the bill does not include an appropriation to cover increasing costs at the Department of Public Safety (DPS), it will require the training division to develop a curriculum for basic and in-service training that is in compliance (a nonrecurring cost) and to provide this training on an ongoing basis (a recurring cost). Additionally, while it is difficult to quantify the fiscal impact of a reduction in officer strength, that will certainly be one result of the increased reporting requirements.

**DPS** makes the following cost estimates:

Nonrecurring

- Development of a basic and in-service curriculum \$15.0

Recurring

- Delivery of basic training \$6.0
- Delivery of in-service training \$65.0

Total: \$86.0

Additional costs of training vehicles and equipment, forms, data entry personnel and computer equipment have not been estimated.

**SHTD Traffic Safety Bureau** makes the following cost estimates:

Nonrecurring

- Development of a data collection system \$11.0
- Purchase data collection system hardware/software \$33.0

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- Development of the study and annual report \$20.0
- Subtotal: \$64.0

Recurring

- Maintenance of data collection system \$8.0
- Training data collection personnel and officers \$17.0
- Data collection and entry \$33.0
- Study – conduct, analysis and delivery \$55.0
- Delivery of annual report \$11.0
- FTE (Salary & Benefits) \$48.0
- Subtotal: \$172.0
- Total: \$236.0

Costs associated with the development of policy and data reporting by local, county and state law enforcement agencies are not estimated here.

The Administrative Office of the Courts (AOC) reports that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. The fiscal implications for the courts, district attorneys and the public defender shall depend on the amount of litigation generated by the Act.

The Administrative Office of the District Attorneys (AODA) reports that it may be necessary to shift personnel from misdemeanor courts to district courts to prosecute cases resulting from this Act.

Creating the crime of aggravated fleeing a law enforcement officer as a fourth degree felony will likely have a significant impact on the Corrections Department (CD). Felony convictions for this offense will result in an overall increase in incarceration and probation costs. In previous years, CD has estimated that this Act would result in five to ten convictions per year. CD has also estimated that approximately half of these convictions would result in sentences of incarceration and the other half in probation. The length of probation would increase the period of probation from one year to eighteen months. Based on FY02 actual expenditures, the annual cost to house a male inmate at a private correctional facility is \$23,552 and the annual cost per female client is \$25,117. The cost per client for a standard supervision program in probation and parole is \$1,533 annually. Based on these figures, the increased cost to the CD would be between \$100,000 and \$150,000 annually.

**RELATIONSHIP**

Duplicates HB 87; Partially Duplicates HB 30, but also includes data collection and reporting requirements not included in HB 30.

**TECHNICAL ISSUES**

Section 2 of the bill refers to an “authorized emergency vehicle” while Section 6 refers to an “appropriately marked law enforcement vehicle.” These terms are not defined, and it is unclear whether they have the same meaning. It is unclear whether unmarked vehicles are included.

AODA reports that the bill sets forth two different legal standards for determining when a high speed chase should be initiated as well as two different grounds for initiation of a high speed pursuit. The relevant language in the bill reads as follows:

“The written policy shall, at a minimum, require that:

(1) a law enforcement officer may initiate a high speed pursuit to apprehend a suspect who the officer has *reasonable grounds* to believe poses a clear and immediate threat of death or serious injury to others or who the officer has *probable cause* to believe poses a clear and immediate threat to the safety of others that *is ongoing and that existed prior to the high speed pursuit;*”

AODA suggests rewriting the language to use one legal standard, as follows:

(1) a law enforcement officer may initiate a high speed pursuit to apprehend a suspect who the officer has *reasonable grounds* to believe poses a clear and immediate threat of death or serious injury to others; or *reasonable grounds* to believe poses an immediate threat to the safety of others that *existed prior to the pursuit and continues to exist during the pursuit;*

JCF/njw