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FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 02/28/03 HB _____

SHORT TITLE: Child Endangerment SB 532

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

- Corrections Department (CD)
- Association of District Attorneys (AODA)
- Department of Public Safety (DPS)
- Attorney General (AG)
- Department of Health (DOH)
- State Highway and Transportation Department (SHTD)

No Response

- Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 532 enacts a new section in Chapter 30, Article 6 of NMSA 1978, creating the crime of “Child Endangerment.” Child endangerment consists of violating the provisions of Section 66-8-102, the DWI statute, while “transporting a child in a motor vehicle.”

Penalties for child endangerment are as follows:

A third-degree felony when there is no injury to the child,

A second-degree felony when the child is injured and

A first-degree felony when there is great bodily harm or the child dies.

Significant Issues

The Attorney General (AG) notes that the bill addresses circumstances that might otherwise be charged under the child abuse statute, NMSA 1978, §30-6-1. AG further notes that under the child abuse statute, NMSA 1978, §30-6-1, the prosecution must prove that the alleged driving while intoxicated with a child in the car endangers the child's life or health. This bill eliminates that requirement. AG notes that the state's appellate courts generally hold that a more specific statute applies over a more general statute. (AG references State v. Guilez, 2000-NMSC-020, 129 N.M. 240, 4 P.3d 1231)

AG reports that currently, a person convicted of child abuse for a second offense, with or without injury, is guilty of a second-degree felony. A second offense of child endangerment where there is no injury would remain a third-degree felony.

AG notes that the bill raises the issue of whether a defendant may be charged with both a DWI offense and child endangerment. AG reports that state appellate courts have identified double jeopardy problems in cases where prosecutors have attempted to charge more than one offense in circumstances involving driving while intoxicated and vehicular deaths of children. (AG references State v. Santillanes, 2000-NMCA-017, 128 N.M. 752, 998 P.2d 1203) In order to determine whether more than one offense may be charged in situations involving "unitary conduct," our state's appellate courts look to the "legislative intent." (AG references Swafford v. State, 112 N.M. 3, 810 P.2d 1223 (1991))

AG notes the bill is silent as to whether it's provisions are intended to preempt other potential crimes arising from unitary conduct, such as vehicular homicide or child abuse.

The New Mexico Court of Appeals has held that the Legislature intends the vehicular homicide statute (NMSA 1978, §66-8-101) to be the applicable statute governing child abuse resulting in death, where the death is caused by the operation of a vehicle while the driver was intoxicated. (State v. Santillanes). As a result, case law dictates that the death of a child killed in a vehicle driven by an intoxicated offender may not currently be addressed as anything greater than a third-degree felony. By contrast, other forms of child abuse resulting in death are currently defined as first-degree felonies under NMSA 1978, §30-6-1(D).

FISCAL IMPLICATIONS

Because the bill is likely to increase the felony caseload significantly, the courts, district attorneys, PDD and the AG will likely see a significant increase in costs.

AG indicates that the bill will likely prompt an increase in the appellate caseload, increasing costs for PDD, courts and the AG.

Corrections Department (CD) will likely see a significant increase in costs, as the prison population and the numbers of offenders under supervision in probation and parole programs is likely to

increase. CD notes that because second and third degree felonies generally require longer prison sentences, the additional costs of incarceration are greater and will persist for many years.

TECHNICAL ISSUES

The Administrative Office of the District Attorneys (AODA) notes that “child” is not defined in the bill.

AG notes that it is not clear whether “injury” refers only to physical injury or to all types of injury a child might suffer. AG notes that there may be issues at trial as to whether a DWI offender has been the cause of injury, great bodily harm, or death.

AODA suggests amending the bill to include the following definitions:

“child” means a person who is less than eighteen years of age; and

“injury” means an injury that causes painful, temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the child’s body or causes great bodily harm or is likely to cause great bodily harm or death.”

As an alternative to the provisions in the bill, AG suggests amending other existing statutes to evince a legislative intent to apply a first-degree felony penalty when a child is killed in a vehicle driven by a DWI offender. Alternatively, the Legislature could amend the child abuse statute to limit the proof necessary to establish abuse in DWI situations.

There are no provisions that the offender be cognizant of the child’s presence in the vehicle at the time of driving.

JFY/yr