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FISCAL IMPACT REPORT

SPONSOR: Rodriguez DATE TYPED: 2/25/03 HB _____
 SHORT TITLE: Child Endangerment SB 708
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		See Narrative	Recurring	General Fund

SOURCES OF INFORMATION

Responses Received From
 Office of the Attorney General
 Department of Public Safety
 Corrections Department
 Public Defenders Department
 Administrative Offices of the Courts

SUMMARY

Synopsis of Bill

Senate Bill 708 proposes to create a new crime against children and/or dependents. The bill proposes the crime of “child endangerment” and defines the crime as transporting a child in a motor vehicle when driving while intoxicated, or knowing allowing an intoxicated person to transport a child.

The bill eliminates the need to prove that driving while intoxicated with a child in the car endangers the child’s life or health, as is currently required under the child abuse statute.

The bill classifies “child endangerment” as 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

1. At trial there may be issues relating whether the intoxicated driver was the *cause* of the child's injury or death. What if the accident was the result of another motorist's error or moving violation? What if intoxication was not the causal factor leading to the accident? Would the intoxicated driver still be liable for a second or first-degree felony? Should intoxication be a rebuttable presumption of cause of the accident, and therefore guilt of the crime of second or first-degree child endangerment?
2. There are potential problems with holding another responsible for knowingly allowing a child to ride with an intoxicated individual. A parent may be coerced by an intoxicated co-parent or spouse. Or, what if a co-parent or spouse has a drinking problem, but is not intoxicated when the child is left alone in his or her custody? If the alcoholic co-parent or spouse becomes intoxicated and thereafter transports the child in a car, has the non-present co-parent or spouse knowingly allowed this to occur?
3. The creation of this new crime, in light of New Mexico's drinking and driving problems, will likely have a significant impact upon the courts, public defenders office, district attorneys office, children, youth and families department (if the child is in need of placement), and the corrections department (as more individuals are sentenced to longer prison terms, parole terms, and the like). Enhanced penalties result in fewer plea bargains.
4. The Department of Public Safety raises the question of whether there would be double jeopardy issues associated with the DWI being a lesser included offense of the child endangerment charge. Also, would there be an issue regarding the fact that DWIs are handled in metro, municipal and magistrate courts, but child endangerment would be subject to the jurisdiction of the district court.

FISCAL IMPLICATIONS

There are no appropriations associated with SB 708. However, should it be enacted, there will be secondary costs to the state as outlined above for the courts, public defenders department, district attorneys office, children, youth and families department, and corrections department.

SJM/sb