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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 3/18/05 HB CS/514/aSPAC

SHORT TITLE Equitable Sentencing For Certain Offenses SB _____

ANALYST Hanika-Ortiz

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			\$0.1		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA) for HB 514

Office of the Attorney General (AGO) for HB 514 and HB 514/HCPACS

Administrative Office of the Courts (AOC) for HB 514 and HB 514/HCPACS

New Mexico Corrections Department (NMCD) for HB 514

New Mexico Sentencing Commission (NMSC) for HB 514 and CS/HB514/HJCS

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment removes Section 2 through 5 and Section 12 from the provisions of the bill. Section 2 relates to criminal trespass; Section 3 relates to criminal damage to property; Section 4 relates to unauthorized graffiti on personal or real property; Section 5 relates to desecration of a church and Section 12 relates to cheating a machine or device.

Synopsis of Substitute Bill

The House Judiciary Committee Substitute for House Consumer and Public Affairs Committee Substitute for HB 514 standardizes the levels of financial crimes and sets forth an equitable schedule of sentencing for certain criminal offenses concerning theft, fraud, property damage, criminal trespass and forgery to make them consistent; and raises the levels at which a misdemeanor financial crime becomes a felony to compensate for inflation.

Significant Issues

The bill standardizes the step levels of those crimes in which the level of offense is determined by the financial amount involved. Presently, the amount that determines a misdemeanor through 2nd degree felony crime differs from crime to crime. The bill corrects those disparities for a single fine schedule for the crimes specified in the bill.

The bill raises the level at which a crime goes from a misdemeanor to a felony from \$250 to \$500. The corresponding levels are now \$250 or less is guilty of a petty misdemeanor; from over \$250 to \$500 is guilty of a misdemeanor; from over \$500 to \$2.5 thousand is guilty of a fourth-degree felony; from over \$2.5 thousand to \$20 thousand is guilty of a third-degree felony; and over \$20 thousand is guilty of a second-degree felony.

Includes the offense of criminal trespass and amends the statute to provide that a person who enters upon the lands of another without prior permission and injures, damages or destroys any part of the realty or its improvements, including buildings, structures, trees, shrubs or other natural features is liable for specified civil damages.

There are no petty misdemeanors or misdemeanor levels for forgeries; instead all forgeries with no quantifiable damages or with damages less than \$2.5 thousand will be fourth-degree felonies, over \$2.5 thousand third-degree felonies and over \$20 thousand second-degree felonies.

The bill seeks to address credit card fraud which will be determined by the value of property or service that is fraudulently obtained in any consecutive six-month period.

The bill also seeks to address the AODA's concerns regarding the Worthless Checks Program with a \$100 misdemeanor/felony threshold, with checks written within a three month period being aggregated.

Language is added for knowingly conspiring with another by soliciting, commanding, requesting, inducing or employing that person to commit false application or fraudulent claim or fraudulent proof of loss is guilty in accordance with the Act.

In addition to the fines imposed, the bill also provides for a person convicted of tax fraud to pay for prosecution costs. A person convicted of committing graffiti to property will perform mandatory community service and provide restitution to the property owner for damages and restoration.

PERFORMANCE IMPLICATIONS

The AOC reports the bill may have an impact on the performance measures of the magistrate, metro and district courts regarding cases disposed as opposed to filed, cases filed by case type, and clearance rates.

FISCAL IMPLICATIONS

The bill could increase the caseload of theft related and property damage cases in the magistrate and metropolitan courts and decrease the caseload in the district courts. The bill will add all cases of larceny or theft in the amounts between \$250 and \$500 previously filed as felonies in

district courts, to the magistrate and metropolitan court caseloads.

The AGO reports the bill may create fewer felony level prosecutions which could reduce the number of appeals for the AG's Appellate Division.

The AODA reported in the original bill that 25% of their operating budget comes from the Worthless Check Program and increasing the limits may have a negative impact on revenues collected for training and administrative purposes. The latest substitute allows for worthless checks to have a \$100 misdemeanor/felony threshold (it is \$25 in existing law) as opposed to the proposed \$500 threshold for other crimes, with checks written within a three month period being aggregated.

It is unclear to what degree the State will be able to recover prosecution costs for the crime of tax fraud and will be determined by the level of crime and the personal resources of the guilty person.

The NMCD notes this bill might result in a reduction in the prison population and in smaller probation/parole caseloads. On the other hand, crimes that were previously only fourth degree felonies that, in some cases now are higher degree felonies because of the amount of damages could result in longer prison terms. This could result in an increase in prison population and in persons being placed on probation and parole.

ADMINISTRATIVE IMPLICATIONS

The AOC reports that additional staff will be needed to dispose of cases in a timely manner and prior to the running of the Six Month Rule, which would result in dismissal of those cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 227, proposes sentence enhancements for certain felonies when related to criminal street gang activity.

TECHNICAL ISSUES

The bill addresses restitution, community service and costs of prosecution for certain crimes but not for others. Tax fraud appears in the bill to be the only crime allowing the State to recover the costs of prosecution. Criminal trespass and graffiti appears to be the only crime that addresses restitution and/or community service. It is unclear what time period exists for a person guilty of graffiti to complete the restitution and/or community service requirements.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Present prosecution schemes and sentencing for listed crimes will remain unchanged.

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Continued inconsistency and disparity in financial crime categorization and punishment.

AHO/njw:lg