Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR	Martinez	DATE TYPED	2/14/2005	HB	
SHORT TITL	E Vehicle Immobilizati	mobilization for Certain Offenses		SB	320
			ANAL	YST	Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	See Narrative				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From
Children Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Attorney General (AG)
Public Defender Department (PDD)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 320 amends Section 32A-2-29 NMSA 1978 to provide for immobilization of a motor vehicle when a bench warrant is issued for a child who fails to pay fines owed for municipal traffic code violations or fails to appear to answer allegations regarding such violations. The Act further provides that upon service of the warrant, the vehicle the child is driving shall be immobilized for up to 5 days, or until a parent or legal guardian appears with the child before the court, unless immobilization of the vehicle poses an imminent danger to the health, safety or employment of the child's immediate family or the family of the owner of the vehicle. Additionally, the Act provides that local law enforcement agencies shall provide the immobilization devices, with the immobilization costs to be borne by the child.

Senate Bill 320 Page 2

Significant Issues

SB 320 addresses a concern that a significant number of children are failing to pay or are ignoring traffic citations issued by the municipal, magistrate and metropolitan courts.

There is no legal impediment to enactment. Legal responsibility for a minor's operation of a vehicle is imputed to the parent or legal guardian under the laws providing for the licensure of minor drivers. NMSA Sec 66-5-1 et seq.

The language is unclear about whose vehicles can be immobilized. As drafted, the court could order that any vehicle the child was driving be immobilized, even if it belonged to someone who has no legal responsibility for the child or to someone who has not given the child permission to use the vehicle. The bill, CYFD observes, may be subject to legal challenge unless there is language that limits immobilizing a vehicle where the adult owner has permitted the child to use the vehicle or is legally responsible for the child user.

The ownership of vehicles driven by juveniles is generally parental. Court ordered immobilization impact parents and other parties driving a family vehicle. Immobilization of vehicle, CYFD notes, could unduly penalize the entire family.

Under current law municipal, magistrate, and metropolitan courts lack the authority to immobilize a vehicle after issuance of a bench warrant to a child for traffic violations and failures to appear. The issue raised by AG is whether the named courts should have the same enforcement authority over children that drive and violate traffic laws as the courts presently have over adult drivers who violate traffic laws.

FISCAL IMPLICATIONS

SB 320 may result in an increase of fines collected for traffic violations committed by children.

ADMINISTRATIVE IMPLICATIONS

With the caveat that immobilization will occur unless it poses an imminent danger to the health, safety or employment of the child's immediate family or the family of the owner of the motor vehicle, the court can expect to be challenges to the immobilization.

TECHNICAL ISSUES

SB 320 provides for immobilization, unless it poses an imminent danger to the health, safety or employment of the child's immediate family or the family of the owner of the vehicle. The AOC recognizes the Legislature's prerogative to enact this type of legislation, but would appreciate further guidance in the bill as to who is to make the decision that an imminent danger exists: the courts, or law enforcement.

The PDD is concerned that the proposed legislation recognizes and does not seek to amend the current language of 32A-2-29, which clearly states that the Children's Court retains exclusive jurisdiction over a Child who commits violations under 32A-2-3(A)(1). Also, Section 32A-2-3(A)(1) provides that the Children's Court has exclusive jurisdiction over the delinquent acts of municipal traffic code violations and Motor Vehicle Code violations. The amended language,

Senate Bill 320 Page 3

according to PDD seeks to divest the Children's Court of its jurisdiction over the Child when he or she fails to pay a fine to municipal, magistrate or metropolitan court or fails to appear in one of those courts to answer allegations of municipal and/or Motor Vehicle Code violations.

The title refers to a bench warrant "issued *to* a child..." (italics added). It may be more appropriate to refer to a bench warrant issued "for" a child. Section 1.A. refers to a bench warrant issued *for* the child. The language in the bill and the title should be consistent.

BD/lg