

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

ORIGINAL DATE 1/31/08

SPONSOR Rehm LAST UPDATED _____ HB 591

SHORT TITLE Crime Of Motor Vehicle Embezzlement SB _____

ANALYST Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 New Mexico Municipal League (NMML)
 Public Defender Department (PDD)
 Sentencing Commission (SC)
 Taxation & Revenue Department (TRD)

SUMMARY

Synopsis of Bill

House Bill 591 creates new two new criminal offenses related to motor vehicles. The first offense created by HB 591 is for embezzlement of a vehicle. Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle with which the person has been entrusted, with fraudulent intent to deprive the

owner of the vehicle or motor vehicle. The bill also establishes fraudulently obtaining a vehicle or motor vehicle as a new criminal offense. This offense consists of intentionally misappropriating or taking a vehicle or motor vehicle that belongs to another person by means of fraudulent conduct, practices or representations. The offenses are established as second, third, or fourth degree felonies, dependent upon the value of the vehicle or motor vehicle.

HB 591 also changes the offense related to receiving or transferring stolen vehicles or motor vehicles pursuant to Section 30-16D-6 NMSA 1978 from an automatic fourth degree felony, to a second, third or fourth degree felony, dependent upon the value of the motor vehicle. It also establishes second and third degree felonies related to the unlawful taking of a vehicle or motor vehicle, dependent upon the value of the motor vehicle. Finally, HB 591 expands requirements in Sections 30-16D-8 and 30-16D-9 NMSA 1978, which ensure proper identification of vehicle or engine parts to motor vehicle components.

HB 591 defines the criminal offenses created or changed by it as racketeering offenses under the Racketeering Act.

HB 591 also provides for criminal sentencing enhancements if a stolen vehicle or motor vehicle is used in the commission of a felony. Specifically, the bill provides that when a separate finding of fact by the court or jury shows that a vehicle or motor vehicle was unlawfully taken, embezzled or fraudulently obtained was used in the commission of a non-capital felony, the basic sentence of imprisonment shall be increased by one year. Second or subsequent non-capital felonies shall be increased by three years. These sentencing enhancements shall serve as the first years of the sentence and shall not be suspended or deferred.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The AOC notes as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, court room availability and jury fees. These additional costs are not capable of quantification.

The AODA notes there will be minimal costs involved for prosecutors since these crimes are currently being prosecuted under other statutes.

The Sentencing Commission states legislation which increases sentences may have the effect of increasing the length of time taken to resolve a case. Further research is necessary to discover the impact of increased sentences on the criminal justice system.

SIGNIFICANT ISSUES

The AODA provided the following:

New Mexico being a border state has a significant problem with automobile theft. According to the National Insurance Crime Bureau web site in 2006 there were 9,225 vehicles stolen in New Mexico. Vehicle thefts were up 15.4% from 2005 in New Mexico while nationwide thefts dropped 3.4%. Giving the FBI's estimated average valuation of \$6,173 per vehicle stolen this amounts to an estimated \$56.9 million in losses in vehicle value alone. This does not take into account losses for property that may have been inside the vehicle, loss of work, nor other related costs associated with the theft. Albuquerque was ranked the 13th highest metropolitan area nationwide for automobile theft and had a theft rate of 882.77 vehicles stolen per 100,000 people.

These types of cases can be particularly difficult to obtain restitution for victims, as when individuals are caught typically it is while driving the stolen vehicle and not in the act of theft. In these situations there is usually no way to prove the person in possession of the vehicle is, in fact, the individual that stole the vehicle and the most they can be charged with is Possession of a Stolen Motor Vehicle, 66-3-505 NMSA, a fourth degree felony punishable by only one year imprisonment (special penalty). While significant damages can be caused by someone in possession of a stolen vehicle, there is only a one year period in which to collect restitution. While Unlawful Taking of a Motor Vehicle, 66-3-504 NMSA, provides a penalties from 18 months imprisonment if the value of the vehicle is under \$2500 and three years if the value is over \$2500, it is more difficult to prove as the prosecutor must prove beyond a reasonable doubt that the individual is in fact the one that stole and damaged the vehicle. Additionally, if a typical vehicle now costs an average of \$20,000, increasing the penalties in line with the Equitable Sentencing Act would allow for longer periods in which restitution can be assessed, especially where a vehicle has been damaged beyond repair. Certainly a vehicle, essential for life and earning a livelihood in New Mexico, should be as valued as any other property.

ADMINISTRATIVE IMPLICATIONS

Enhanced penalties may initially produce a slight increase in the number of trials involving these charges, but once the new "norm" is accepted this increase may disappear.

DW/bb