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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11

SPONSOR Muñoz LAST UPDATED _____ HB _____

SHORT TITLE 6 Month Aggregation for Stolen Property SB 207

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------------|---------------|----------------------|-------------------------|------------------|
| Total | NFI | \$1.5-\$160.0 | \$1.5-\$160.0 | \$3.0-\$320.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 207 amends the penalties for receiving stolen property and shoplifting to allow the prosecution of these crimes based on six month increments: the classification of these crimes as a petty misdemeanor, misdemeanor or felony (and the applicable degree) will now be based on the value of all items received or shoplifted in any six month period.

The effective date of this bill is July 1, 2011.

FISCAL IMPLICATIONS

The NMCD reports this impact:

The bill is likely to result in more convictions for these crimes. Offenders convicted of petty misdemeanors and misdemeanors typically do not come within the custody or probation supervision of NMCD. However, felony offenders can be sentenced to NMCD prison and/or placed on probation or parole. The additional felony convictions resulting from this bill would increase the Department's costs by leading to minimal to moderate

increases to the inmate population and probation/parole caseloads. The three year operating budget impact estimates above are based on the estimate of one to 5 offenders being imprisoned or placed on probation as a result of this expanded crime bill. However, it is always difficult to predict or estimate the ultimate effect of any expanded crime bill with any certainty. NMCD cannot control how many offenders are convicted of this expanded crime.

As is almost always the case, there is no appropriation in the bill to the Department to cover any of the Department's increased costs associated with costs resulting from increased penalties imposed under this bill.

The NMCD also notes that there may be some minimal increases in the NMCD's revenue (caused by a minimal amount of revenue generated by the probation/parolee supervision fees paid by offenders during their probation/parole period). However, the NMCD asserts that this amount would be more than offset by the yearly incarceration costs if even one offender is sent to prison as a result of this expanded crime.

SIGNIFICANT ISSUES

The AODA advises:

SB 207 would change existing law as interpreted by our courts that when property is taken from more than one owner or at more than one time the value of that property cannot be aggregated into one count to increase the penalty. In other words, currently if a defendant received three pieces of stolen property in the same month with one piece valued at \$250, another valued at \$150 and the third valued at \$300 the defendant would be charged with three different crimes, a misdemeanor for the first piece of property, a petty misdemeanor for the second piece of property and a misdemeanor for the third. To hold otherwise would violate a defendant's right to be free from double jeopardy.

However, the relevant inquiry in all double jeopardy cases is what legislature intended. The Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the Legislature intended. The Legislature is free to change the statute to allow aggregation of the value of all stolen property received or the value of all items shoplifted in any consecutive six-month period in determining with what degree of the crime the defendant should be charged without violating the defendant's double jeopardy rights.

Using the example above, the defendant who received three pieces of stolen property in one month could be charged with a fourth degree felony since the aggregated value of the property received exceeded \$500.00 without violating double jeopardy.

The PDD adds this to the analysis:

It has the positive implication of simplifying prosecution by consolidating the actions within a pattern of behavior into a single unit of prosecution. However, for the PDD, it may have the negative effect of creating the prosecution of more felonies that would have been multiple misdemeanors in the past and would impact offenders by subjecting them to greater felony consequences.

The bill may have negative implications for prosecutors and law enforcement as well: this bill may make it more difficult to prove crimes because prosecutors would have to prove all instances in order to secure a single conviction as opposed to obtaining convictions for some of the smaller counts even if not obtaining convictions on other counts within a single six month period. Prosecutors might also have to deal with double jeopardy implications following a conviction if the offender is later alleged to have received or shoplifted within the same six month period.

The NMCD expresses this concern:

If numerous new or expanded crime bills such as this one are passed, NMCD will eventually reach its rated capacity for its prison population. At that point, NMCD and/or the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. Early release jeopardizes public safety, and both housing inmates out of state and building new prisons is expensive.

PERFORMANCE IMPLICATIONS

The NMCD reports that SB 207 would negatively impact the Department's ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions.

The AOC points out that the courts are participating in performance-based budgeting. This bill may have an impact on these measures of the courts: cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

The NMCD notes that if the bill were to substantially increase the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff.

MD/svb