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## FISCAL IMPACT REPORT

**SPONSOR** Dixon/Rehm/Garratt      **ORIGINAL DATE** 02/01/21  
**LAST UPDATED** 02/26/21      **HB** 145/aHF1#1  
**SHORT TITLE** Crime of Illegally Dismantling a Vehicle      **SB** \_\_\_\_\_  
**ANALYST** Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY21                    | FY22 | FY23 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|-------------------------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | See Fiscal Implications |      |      |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Law Offices of the Public Defender (LOPD)  
 Administrative Office of the District Attorney (AODA)  
 Office of the Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Sentencing Commission (NMSC)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of HF1#1 Amendment

House floor amendment #1 to House Bill 145 changes the third-degree felony offense created by the bill to “operating a chop shop,” which consists of a person “who knowingly owns, operates, maintains, or controls a chop shop or conducts operations in a chop shop,” and clarifies the definition of “chop shop.”

The amendment addresses concerns raised in agency analyses regarding the culpability standard used in the bill’s description of the offense and confusing language and undefined terms in the definition of “chop shop.”

#### Synopsis of Original Bill

House Bill 145 creates the third-degree felony of illegally dismantling a “motor vehicle, vehicle, stolen motor vehicle or stolen vehicle,” which consists of a person owning, operating,

maintaining, or controlling a “chop shop,” who “knows or has reason to believe that it is a chop shop.”

The bill defines “chop shop” as “a building, lot, or other structure or premises where a person possesses, receives, stores, disassembles, or alters, including the alteration or concealment of any identifying feature or number, ... a vehicle required to be registered pursuant to the Motor Vehicle Code or any vehicle, motor vehicle or motor vehicle engine or component as defined in the Motor Vehicle Code, an unlawfully obtained motor vehicle, vehicle or major component motor vehicle part for the purpose of using, selling or disposing of the motor vehicle, vehicle or major component motor vehicle part.”

The bill makes clear that that a prosecution for the new crime does not preclude prosecution under the Racketeering Act.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

LOPD states that while it could likely absorb an increase in cases due to the passage of the bill, any increase in LOPD expenditures resulting from the passage of this bill and other proposed criminal legislation would likely require an increase in indigent defense funding to adequately represent individuals charged with the new crimes.

AOC states that 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 the bill and an increase in commenced prosecutions and appeals from convictions. 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.

NMSC and NMCD state that while it is difficult to determine the effect of HB145 on the state’s prison population, the creation of any new crime will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. NMSC notes that the average length of prison stay for third degree property crimes is 695 days. NMCD reports the average cost to incarcerate a single inmate in FY20 was \$44.8 thousand; however, due to the high fixed costs of the state’s public prison facilities, LFC estimates a marginal cost (the cost per each additional inmate) of \$27.8 thousand per inmate per year across all facilities. According to NMCD, the cost per client in Probation and Parole averages out to \$3,776 annually.

## **SIGNIFICANT ISSUES**

NMAG focuses on the bill’s requirement that a person “knows or has reason to believe” that a facility is a chop shop. NMAG explains that New Mexico appellate courts have expressed concerns about criminal laws that used similar standards of mental culpability, which are generally associated with civil negligence. See, e.g., *State v. Consaul*, 2014-NMSC-030, ¶¶ 27-40, which addressed the confusion resulting from a criminal statute proscribing a person from “knowingly, intentionally, or negligently” abusing a child and held that the statute should be interpreted to require “reckless disregard,” not ordinary negligence, as the minimum culpable

mental state for child abuse.

LOPD points to three issues with the bill. First, LOPD states that the scope of this bill is unclear. According to LOPD, the bill’s presumed purpose is to ensure that owners and operators of chop shops—persons who traditionally distance themselves from the everyday running of the operation—can be punished. Currently, such persons can already be punished under accessory, conspiracy, and racketeering provisions contained in NMSA 1978, Sections 30-28-1 (accessory), 30-28-2 (conspiracy), and 30-42-4 (racketeering) in relation to the crimes of unlawful taking of a motor vehicle (Section 30-16D-1); embezzlement of a motor vehicle (Section 30-16D-2); fraudulently obtaining a motor vehicle (Section 30-16D-3); receiving or transferring stolen motor vehicles (Section 30-16D-4); and altering or changing the serial number, engine number, decal or other numbers or marks of a motor vehicle (30-16D-6). Moreover, under current law, prosecutors often charge vehicular crimes associated with chop shops *per vehicle* resulting in dozens or hundreds of counts in a single case. In short, LOPD believes this bill is unnecessary to enable prosecutors to pursue criminal cases against chop shop owners.

Second, LOPD states that it is not clear what the terms “operating, maintaining or controlling” are intended to mean. For example, one interpretation is that an employee of a chop shop, such as a mechanic, may be unaware that some of the vehicles they are working on are stolen or otherwise qualify the business as a “chop shop.” If the mechanic has keys to the building and shares responsibilities in operating the business, are they “controlling” the chop shop for the purposes of this bill? LOPD notes that the mens rea requirement—“who knows or has reason to believe”—does not alleviate the concern because “has reason to know (or believe)” is a civil negligence standard and does not require criminal culpability. *See State v. Suazo*, 2017-NMSC-011, ¶ 23, 390 P.3d 674 (that someone “should have known” of a risk “is essentially a civil negligence standard”). The “has reason to believe” language calls for speculation on behalf of the trier of fact and can lead to round-ups of everyone present, whether or not they had actual knowledge. LOPD recommends that an *actual* knowledge standard be applied.

Third, LOPD believes that the definition of “chop shop,” is perplexing and might lead to constitutional vagueness challenges. *See e.g., State v. Laguna*, 1999-NMCA-152, ¶¶ 25-26, 128 N.M. 345 (a vagueness challenge looks at “whether the statute allows individuals of ordinary intelligence a fair opportunity to determine whether their conduct is prohibited” and permits “arbitrary and discriminatory enforcement of the statute, which occurs because the statute has no standards or guidelines and therefore allows, if not encourages, subjective and *ad hoc* application”). LOPD notes that the vagueness stems, in part, from the double use of an “including” clause. It is clear that “chop shop” refers to a “building, lot, facility or other structure or premises where a person possesses, receives, stores, disassembles or alters,” but then the definition breaks down. Without clarification, this definition may lead to constitutional challenges on vagueness and other due process grounds. Similarly, LOPD observes that the bill does not define “major component vehicle part,” which could lead to extensive trial and appellate litigation.

AOC notes that other states and the federal government have enacted chop shop statutes similar to HB145. Like LOPD, AOC notes that the bill does not provide a definition of “major component motor vehicle part” and also notes that there is no definition of the term in the Motor Vehicle Code. Without a statutory definition, the public (including defendants and juries) and legal professionals (such as law enforcement, prosecutors and defense attorneys, and judges) may find the term of “major component motor vehicle part” too vague when determining exactly

what conduct is prohibited, and exactly how a person’s conduct may violate the statute. (AOC points out that HB509, a bill similar to HB145 introduced in the 2019 regular session, included a definition of “major component motor vehicle part.”)

AODA believes HB145 is a good bill that attempts to address chop shops and their destructive effects on our society. The bill provides prosecutors with a specific statute for the prosecution of chop shops rather than having to rely on existing criminal statutes related to stolen vehicles under Section 30-16D-1 et seq.

#### **TECHNICAL ISSUES**

To make the definition of “chop shop” easier to read and understand, a comma might be inserted after the reference to “taxation and revenue department” on page 2, line 10 of the bill.

AOC suggests that the crime of illegally dismantling a vehicle created by the bill be added to the Racketeering Act’s list of offenses that constitute racketeering. See Section 30-42-3 NMSA 1978.

BG/sb/al/rl