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FISCAL IMPACT REPORT

SPONSOR: Cervantes DATE TYPED: 02/27/03 HB 569

SHORT TITLE: Expand Aggravated DWI SB _____

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Minimal	Recurring	

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

- Attorney General (AG)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Department of Health (DOH)
- Taxation and Revenue Department (TRD)
- State Highway and Transportation Department (SHTD)
- Department of Public Safety (DPS)
- Corrections Department (CD)

No Response

- Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 569 amends Section 66-8-102(D), expanding the offense of aggravated driving while under the influence of intoxicating liquor or drugs.

Currently, there are three conditions for aggravated DWI, any one of which makes an offender eligible for an aggravated DWI charge. They are:

- Alcohol concentration of sixteen one hundredths or more in blood or breath while driving,

- Causing bodily injury to a human being as a result of unlawful operation of motor vehicle while driving under the influence or
- Refusal to submit to chemical testing, pursuant to the Implied Consent Act.

The bill adds the following condition:

“Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who while under the influence of intoxicating liquor or drugs to a degree that renders the person incapable of safely driving a vehicle, drives a vehicle within this state with one or more passengers who are less than eighteen years of age”

Significant Issues

The Attorney General (AG) notes that the bill does not contain a requirement that the offender know that the passengers are minors and that without such a requirement, the bill creates a strict liability crime. AG reports that New Mexico courts have upheld DWI as a strict liability crime and references State v. Harrison, 115 N.M. 73, 846 P.2d 1082 (Ct.App. 1992). AG also references Santillanes v. State, 115 N.M. 215, 849 P.2d 358 (1993) where the court held that under the child abuse statute, Section 30-6-1(D), the term “negligently” requires proof of criminal negligence rather than civil negligence.

DPS notes that the vagueness of language in the bill will likely make it difficult for law enforcement to determine whether an individual is “incapable of safely driving a vehicle”.

AODA notes that felony child abuse charges are currently made in cases involving the most egregious circumstances. AODA reports that prosecutors weigh factors including the age of the child, whether or not the child is in a car seat, blood/breath results on the driver, and whether or not an accident occurred in determining whether or not the danger to which the child has been exposed rises to the level of felony child abuse. AODA notes that in the absence of such supporting facts, prosecutors have no alternatives to address the presence of a minor in the vehicle at the time of driving.

FISCAL IMPLICATIONS

AODA notes that the provisions of the bill will likely prompt additional litigation. District attorneys, PDD, AG and the courts could see cost increases as a result.

Corrections Department (CD) notes that because this bill creates a new offense for aggravated DWI, misdemeanor offenders are likely to serve longer mandatory sentences and increased periods of probation meaning that some of these offenders will serve in correctional institutions rather than jails. As a result, the bill will likely result in a small increase in costs to CD.

TECHNICAL ISSUES

AODA notes that the language of Section 66-8-102 D (4) is not identical to that of Section 66-8-102 B. AODA notes that the discrepancy in wording may give rise to arguments that different standards apply for the two areas.

JCF/yr