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FISCAL IMPACT REPORT

SPONSOR: Duran DATE TYPED: 02/21/03 HB _____

SHORT TITLE: Revise Arson Statutes SB 525

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)
 Corrections Department (CD)
 Department of Public Safety (DPS)

No Response

Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 525 reorders the definition of arson, listing three distinct types of arson in place of the current singular definition. The bill also modifies the penalties for committing arson, negligent arson and aggravated arson.

Currently, arson is:

- A misdemeanor if the property destroyed or damaged is worth \$100 or less;
- A fourth degree felony if the value is over \$100 but not more than \$1000;
- A third degree felony if the value is over \$1,000.

The bill makes arson:

A petty misdemeanor if the property destroyed or damaged is worth \$100 or less;
A misdemeanor if the value is over \$100 but not more than \$250;
A fourth degree felony if the value is over \$250 but not more than \$2,500;
A third degree felony if the value is over \$2,500 but not more than \$20,000;
A second degree felony if the value is over \$20,000.

The bill amends Section 30-17-5, defining “recklessly,” an element of negligent arson, as acting with willful disregard for the rights or safety of others and in a manner that endangers another person or real of personal property.

Currently, negligent arson is:

A fourth degree felony.

The bill makes negligent arson:

A third degree felony if it causes death or great bodily harm;
A fourth degree felony if property with a value of \$2,500 or more is destroyed or damaged;
A misdemeanor if property with a value of less than \$2,500 is destroyed or damaged.

Currently, aggravated arson is:

A second degree felony if an individual willfully or maliciously, through the use of explosive or fire, damages property including bridges, vehicles, utility lines, public and private buildings, causing a person great bodily harm.

The bill makes aggravated arson:

A second degree felony if an individual maliciously and willfully sets a fire or causes an explosion that results in great bodily harm to another person;
A third degree felony if an individual maliciously and willfully sets a fire or causes an explosion that results in an impairment to the functions of a member or an organ of another person’s body.

Significant Issues

AG notes that the bill changes the definition of negligent arson to include only acts that directly cause death or great bodily harm to another person. The current statutory definition provides that the act must have directly caused the death or bodily injury of another. AG notes that “great bodily harm” is defined by the New Mexico criminal code as “an injury to the person which creates a high probability of death; or which causes serious disfigurement; or which results in permanent or protracted loss or impairment of the function of any member or organ of the body.” NMSA §30-1-12(A).

AG indicates that the language used to define third degree felony aggravated arson is similar, although not identical, to language used in the §30-1-12(A) definition of “great bodily harm.” Pursuant to §30-1-12(A) the “loss or impairment of the function of any member or organ of the body” constitutes “great bodily harm;” however, the bill makes aggravated arson which causes “an impairment to the functions of a member or an organ of another person’s body” a third degree felony and aggravated arson that involves “great bodily harm” a second degree felony. As a result, AG notes that the bill appears to conflict with NMSA §30-1-12(A).

Corrections Department (CD) notes that by delineating the various degrees of arson offenses, the

bill creates lesser sentences for certain levels of arson and greater sentences. Because penalties for some offenses are made misdemeanors, a number of offenders will likely serve time in jail rather than prison. Because penalties for other offenses are raised, some offenders will be serving longer prison sentences.

The Department of Public Safety (DPS) notes that the bill's provisions for various degrees of arson will likely simplify the charging and prosecution of arson offenses.

FISCAL IMPLICATIONS

CD predicts that because this bill will have the effect of increasing the number of jail sentences for some offenses, as well as altering periods of incarceration for others, there will be an overall negligible effect on the prison and probation and parole populations.

Additional appeals may spur an increase in costs for the judiciary. Courts, district attorneys, AG and PDD may see small increases in costs.

TECHNICAL ISSUES

DPS indicates that the bill's definition of arson in paragraph (30-17-5 (A)) is confusing, as setting fire to one's own property appears to be a violation, but using an explosive device to destroy one's own property appears not to be not a violation.

JCF/yr