

FISCAL IMPLICATIONS

Any persons charged under the proposed Act would be chargeable under existing New Mexico statutes. The Act would not criminalize activities that were not already crimes. Therefore, the Act does not have a significant impact or increase cases for the judicial system.

Because the Act anticipates prosecution under the Act in addition to “prosecution pursuant to any other provision of law when the conduct also constitutes a violation of that other provision”, and because the Act treats conduct that is already covered by the criminal code (theft crimes, disposing of stolen property) the Act does have fiscal implications for the Department of Corrections and the counties: greater aggregate sentences require more jail and prison facilities.

According to the Department of Corrections (NMDC) the estimated additional operating budget impact assumes four new convictions (and imprisonment instead of probation) as a result of this bill in the relevant three year period. However, this is only an educated guess. NMCD has no control over who is convicted, and does not know if a significant number of offenders will be convicted as a result of this new crime bill.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned/ operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,521 per year. The cost per client in Intensive Supervision programs is \$3,445 per year. The cost per client in Community Corrections is \$3,475 per year. The cost per client per year for female residential Community Corrections programs is \$41,653 and for males is \$24,803.

SIGNIFICANT ISSUES

The bill creates the Organized Retail Theft Act. It establishes criminal penalties for those offenders convicted of organized retail theft. Organized retail theft is defined as committing an underlying offense designated in the Act (such as larceny, burglary, fraud, etc.) with the intent to obtain retail property from a retail establishment with the intent to transfer the retail property to a retail property fence or causing the property to be placed in the control of the fence (defined as a person or business which buys retail property knowing or believing that the property is stolen).

The level of criminal penalty depends on the value of the retail property illegally obtained. For example, when the theft is of retail property with a market value of over \$500 but not more than \$2,500, the crime is only a fourth degree felony. The higher the value of the property, the higher the severity of the felony.

ADMINISTRATIVE 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 is currently working on possible cost parameters to measure resulting case increase.

OTHER SUBSTANTIVE ISSUES

According to the Corrections Department (NMCD), 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 of inmates jeopardizes public safety, and housing inmates out of state or building new prisons is expensive.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/bym:svb