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FISCAL IMPACT REPORT

ORIGINAL DATE 3/02/17
LAST UPDATED 3/14/17 **HB** 428/HJCS
SPONSOR HJC
SHORT TITLE Revise Certain Criminal Penalties **SB** _____
ANALYST Romero/Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown, may generate savings and impact revenues	Recurring	General Fund and Multiple Other State Funds			

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 407 and HB420.
 Conflicts with: SB 55 and HB 349.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Officer of the Public Defender (LOPD)
 Administrative Office of the Courts (AOC)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

The House Judiciary Committee (HJC) substitute for House Bill 428 revises penalties for certain offenses.

The substitute amends statutes governing the following offenses:

- Littering, Section 30-8-4 NMSA 1978
- Vehicle Registration, Section 66-3-1 NMSA 1978
- Prohibited acts and penalties, special registration plates and parking placards, Section 66-3-16.1 NMSA 1978:
 - A. False information to acquire

B. Person unlawfully using plate or placard

C. Failure to surrender parking placard

- Improper display of registration plate, Section 66-3-18 NMSA 1978
- Horseless carriage registration, Section 66-3-27 NMSA 1978
- New owner to secure transfer of registration and new certificate of title, Section 66-3-103 NMSA 1978
- Expiration of dealer plates, Section 66-3-403 NMSA 1978
- Special registration plates, Section 66-3-409, 66-3-411 through 66-3-417 and 66-3-419 through 66-3-424.28 NMSA 1978
- Bicycles, required acts (Sections 66-3-701 through 66-3-707). Section 66-3-701
- Improper equipment, Sections 66-3-801 through 66-3-806, 66-3-846 and 66-3-846.1 NMSA 1978
- Vehicles without required equipment or in unsafe condition, Section 66-3-901 NMSA 1978
- License carried and exhibited on demand, Section 66-5-16 NMSA 1978
- Pedestrian control signals, Sections 66-7-106 66-7-108 NMSA 1978
- Pedestrian violations, Sections 66-7- 334, 66-7-335, 66-7-338 and 66-7-339 NMSA 1978
- Riding improperly on motorcycles
- Restriction on use of video screens in motor vehicles, Section 66-7-358 NMSA 1978
- Driving on mountain highways, Section 66-7-359 NMSA 1978
- Coasting prohibited, Section 66-7-360 NMSA 1978
- Animals on highway in darkness, Section 66-7-363 NMSA 1978
- Failure to appear, Section 66-8-126 NMSA 1978
- Boat numbering violation, Sections 66-12-4, 66-12-5 and 66-12-6.5 NMSA 1978
- Boat equipment violation, Sections 66-12-7 and 66-12-10 NMSA 1978

The substitute increases the penalty assessments on many existing penalties, and increases the amount of assessments that would be newly imposed in comparison to the original version of the bill. The substitute adds a new section making it a penalty assessment misdemeanor to fail to provide notice, or update a driver's license, when the licensee has a new address or a name change.

The substitute allows the division to suspend the license of a person who has failed to comply with the terms of a citation issued in a jurisdiction that is a party to the Nonresident Violator Compact (NVC). Requires the division to notify a jurisdiction that is a party to the NVC of any of its licensee's failure to comply with the terms of a citation issued in New Mexico.

The original bill made driving with a suspended license a penalty assessment and removed all other consequences, this bill retains the existing penalties, modified as follows: 1) the penalty is reduced from up to 364 days in jail and a \$1000 fine to ninety days in jail and a \$300 fine, or both, and 2) the requirement that the suspension be extended for an additional like period is removed.

Retains current penalties for driving in violation of the Mandatory Financial Responsibility Act and for altering or interfering with traffic-control signs or devices, removing the penalty assessments in the original bill.

The substitute adds language to Section 38 providing penalties for failing to comply with the terms of a citation, including violators who are not residents of New Mexico. The substitute reinstates language removed by the original bill in Section 39, subsections A and B.

HB 428 repeals Sections 30-8-12 (conduct offensive to public well-being, petty misdemeanor), 30-8-13 (unlawfully permitting livestock upon public highways, petty misdemeanor), 30-9-14.1 (indecent dancing, petty misdemeanor), 30-9-14.2 (indecent waitering, petty misdemeanor) and 66-3-424.2 (standardized plate, retired NM State Police officers) NMSA 1978.

FISCAL IMPLICATIONS

The bill proposes to add some penalty assessments which could impact the amount of revenues received by the courts. The LFC does not have access to and did not receive data that could be used to generate a revenue or operating budget fiscal impact projection. Savings realized from fewer court proceedings and additional revenue could potentially reduce strain on the general fund and impact other state funds that revenues from penalty assessments are currently credited to other state funds, as outlined in 66-8-119.

The AOC explained via email that in order to estimate how many people take the offer to accept the penalty assessment and pay MVD directly (Section 66-8-117), AOC would need to contact MVD and compare the number of cases where people chose to appear in court and then extrapolate that percentage to the new charges that would become penalty assessments under the bill.

In order to properly estimate the cost savings of HB 428 on the courts, the AOC would have to analyze a number of factors:

1. the average number of cases containing the charges impacted by this bill processed by the courts each year;
2. the number of cases that carry other charges which would still require court hearings (such as DWI cases that have other traffic charges attached), because the court would still have to spend the same amount of time and resources adjudicating those cases; and
3. after estimating the number of cases that are purely penalty assessments under the new bill, AOC would then have to determine which of those cases are already covered by local rules which already allow the court to assess a penalty on some of these charges. For example, the Dona Ana Magistrate Court has Local Rule Three (attached), which makes some Motor Vehicle Code violations "local penalty assessments". Several courts have similar local rules, so those charges that are already covered by local rule would not lead to cost savings in those courts by making them penalty assessments in this bill.

The AOC believes once all of those factors are considered, and possibly others that will become more clear as the study progresses, the AOC may be able to develop a reasonable estimate of the cases that would be affected by this bill and the fiscal impact that it would have on the courts. This project would take several months to complete.

The Taxation and Revenue Department stated via email that the bill does not directly affect MVD programs as the bill mainly makes changes to criminal infractions.

The report of the Legislative Finance Committee to the Fifty-Third Legislation Volume 1 states

on page 52 “the criminal justice system has been faced with the paradigm of ‘tough on crime’ sentencing enhancements and reform initiatives juxtaposed with reduced budgets and limited staffing. Courts struggle to keep the doors open with reduced staff, district attorneys are barely able to screen cases for trial due to extreme vacancies, and the public defender is refusing cases because caseloads are unmanageable to the point of unconstitutionality. When core functions of the justice system are delayed or hindered, justice is effectively denied.” By relaxing penalties, this bill could relieve the caseloads faced by the courts, allowing the judiciary to better address large issues.

The AOC states “HB 428 penalty revisions in many instances reduce penalties and may obviate the need for some court proceedings. Additional fees defined by Section 66-8-116.3 will still be assessed. In decreasing the incentive to resolve tickets (see “Significant Issues” #2, below), fewer penalty assessments may be paid, as well as the accompanying fees that are credited to court-related funds. This reduction in funding could impact court resources and the provision of services and programs within the courts. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.”

LOPD explains the bill’s “proposed reduction in penalty for many of these offenses could only have a positive effect on the workload of the Law Offices of the Public Defender [hereinafter LOPD], rendering the agency better able to address its constitutionally mandated duty of defending New Mexicans accused of more serious crimes. To the extent this results in fewer trials, fewer additional resources would have to be allocated to our stretched-to-the-limit criminal justice system. Such benefits should inure to the LOPD, police, District Attorney, Attorney General, courts, counties, and possibly the Corrections Department.”

LOPD also states “Further, upon enactment of HB 428 offenders would be likely to simply pay the penalty assessments, whereas the in-court battles under the present statutory scheme guarantees wasted resources and “time served” punishments in lieu of revenue. Enactment of HB 428 would result both in an increase in revenue and a decrease in pointless waste of LOPD, police, court, county and District Attorney resources.”

SIGNIFICANT ISSUES

The AOC submitted the following detailed analysis in response to the original bill:

1) Throughout the Motor Vehicle Code (MVC), penalties vary and are at times pursuant to Section 31-19-1 or pursuant to Section 66-8-7 NMSA 1978, or not specified. Section 31-19-1 provides for a term of imprisonment of less than one year or a fine of \$1,000 or less or both imprisonment and fine in the discretion of the judge for a misdemeanor. A petty misdemeanor carries a term of imprisonment of six months or less or a fine of \$500 or less or both imprisonment and fine in the discretion of the judge. Section 66-8-7 NMSA provides that a violation of the MVC is a misdemeanor unless declared a felony, and provides a misdemeanor penalty of a fine of \$300 or less or a term of imprisonment of 90 days or less or both. In revising current penalties as penalty assessment misdemeanors, HB 428 is removing the discretion of the judge to adjust a sentence for the benefit of the public or an offender, given the offender’s needs and circumstances and record, the circumstances surrounding an offense and the need to protect the public and rehabilitate the offender.

2) HB 428 amends Section 66-8-126 NMSA to provide that a failure to appear in court after

the issuance of a traffic citation is a penalty assessment misdemeanor carrying a \$50 fine. HB 428 amends Section 66-5-30 NMSA 1978 to remove as cause for license suspension that the licensee has failed to fulfill a signed promise to appear or notice to appear in court, whenever appearance is required by law or by the court as a consequence of a charge or conviction under the Motor Vehicle Code (MVC) or pursuant to the laws of the tribe, or that the licensee has failed to pay a penalty assessment within 30 days of the date of issuance by the state or a tribe. HB 428 amends Section 66-5-39 NMSA 1978 to provide that driving while a license is suspended is a penalty assessment misdemeanor, carrying a \$100 fine. Under the HB 428 amendments, a licensee could fail to appear without risking a license suspension, calling into question the incentive for a licensee to appear in court upon a promise or notice to appear. Additionally, if driving with a suspended license leads to a fine of \$100, rather than the current Section 66-5-39 misdemeanor penalty requiring not less than 4 days or not more than 364 days of imprisonment or participation in a certified alternative sentencing program and the imposition of a fine of \$1,000 or less and potential 30-day vehicle immobilization and mandatory extension of the period of suspension for an additional like period, where is the incentive to comply with licensing requirements or the payment of the \$100 fine? The HB 428 amendments remove the court's discretion in crafting a sentence for the offense of driving while a license is suspended that will adequately protect the public, as well as punish the offender.

3) A license can be suspended for a number of reasons, including traffic violations, DUI offenses, and failure to pay child support. Section 40-5A-8 NMSA 1978 permits a district court, as part of a judgment and order for support, to require a person who has failed to pay child support to surrender a license. Section 40-5A-6 NMSA 1978 provides that the failure of a licensee to comply with a judgment and or for support or subpoena or warrants relating to paternity or child support proceedings is grounds for suspension or revocation of a license. Section 40-5A-3(G) NMSA 1978 defines license to include a driver's license. If, under HB 428, driving with a suspended license is a penalty assessment misdemeanor carrying a \$100 fine pursuant to Section 66-8-116 NMSA 1978, will a court still be able to enforce child support obligations through license suspension? If the \$100 penalty is paid, is the license still suspended due to a failure to pay child support? How does the HB 428 amendment affect the court's ability to address policy reasons for the license suspension?

4) There is a question as to the effect of the HB 428 amendments on reciprocal agreements to suspend licenses. (e.g. license suspended in Arizona, suspension recognized in New Mexico).

LOPD explained in response to the original bill:

The *de minimis* offenses addressed by HB 428's reforms already are usually punished by nothing more than fines, but their present classification as crimes punishable by imprisonment require the involvement of LOPD at court. Regular case files are opened upon application of the offenders, and staff time required is the same as for any other case. Admittedly, attorney time tends to be less implicated and requires less experienced practitioners, but the drain on LOPD resources adds up. HB 428 provides a nobody-loses, commonsense solution to this drain - that is actually likely to enhance revenue collection.

Under present statute, LOPD workload is so heavy in some offices that lawyers have been required to move to withdraw from new cases in order to provide effective assistance of counsel to their existing clients. HB 428 would have the effect of somewhat reducing

indigent defense workload, which is likely to reduce need for increases in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the effect on required resources would be necessary after enactment.

PERFORMANCE IMPLICATIONS

LOPD states “enactment of HB 428 would likely allow LOPD administration to allocate resources to more pressing needs involving cases concerning actual danger to public safety.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 55 and HB 349.

TECHNICAL ISSUES

The AOC originally recommended an amendment on page 72, line 1: Transfer of registration and title is governed by Section 66-3-103 not 66-3-403 NMSA 1978.

IR-TR/jle/al