

LFC Requester:

Austin Davidson

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 16JAN2024

Bill No: HB 87

Sponsor: Cynthia Borrego, Joseph L. Sanchez
Short Title: Combine Motor Vehicle Crimes for Sentencing

Agency Name and Code 790 – Department of Public Safety
Number: _____
Person Writing Santana Nieto
Phone: 505-470-4786 **Email** Santana.Nieto@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

(Similar in effect to 2023 HB491) Provides that multiple violations of the crimes of unlawful taking, embezzlement, or fraudulently obtaining or receiving a vehicle or motor vehicle, or of transporting stolen vehicles, apply toward sentencing regardless of which section of law was previously violated. Sets penalties.

Whoever commits any of the cited crimes is guilty of a:

- fourth degree felony for a first offense
- third degree felony for a second offense, regardless of which provision was the first offense
- second degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

FISCAL IMPLICATIONS

No fiscal implications to DPS.

SIGNIFICANT ISSUES

Potential Vagueness Concern: In *Kolender v. Lawson*, the United States Supreme Court stated that the void-for-vagueness doctrine requires that penal statutes define criminal offenses with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. Here, the bill as written would require ordinary people to check an internal cross reference to an additional statute to determine what the penalty structure is for unlawful trafficking of a motor vehicle, embezzlement of a vehicle or motor vehicle, fraudulently obtaining a vehicle or motor vehicle, or receiving or transferring stolen vehicles or motor vehicles. Not only might this raise constitutionality questions under the void-for-vagueness doctrine, but it also deviates significantly from the drafting style of the rest of the Criminal Code. Penalties for criminal conduct should be set forth in the same statute that describes the wrongful conduct to avoid void-for-vagueness concerns. For aggregation of the offenses, a statute should be enacted that is like the Section 31-18-17 NMSA 1978.

In addition, sentencing laws fall under the Criminal Sentencing Act, not the Criminal Code and if the intent HB 87 is to allow enhanced sentencing, Section 5 of the bill should be properly placed in the Criminal Sentencing Act.

PERFORMANCE IMPLICATIONS

No performance implications to DPS.

ADMINISTRATIVE IMPLICATIONS

No administrative implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

No conflict, duplication, companionship, or relationship issues to DPS.

TECHNICAL ISSUES

No technical issues to DPS.

OTHER SUBSTANTIVE ISSUES

No other substantive issues to DPS.

ALTERNATIVES

Not applicable as no impact to DPS.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None at this time.