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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/2016
LAST UPDATED 2/10/2016 **HB** 95/aHJC/aHF1#1

SPONSOR Gentry/Pacheco

SHORT TITLE Hate Crimes Against Law Enforcement **SB** _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate, but will increase costs	Indeterminate, but will increase costs	Indeterminate, but will increase costs	Indeterminate, but will increase costs	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 202.

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 Attorney General (AG)
 Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (LOPD)

Responses not Received From

New Mexico Department of Corrections (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of House Floor Amendment #1

House Floor Amendment 1 to HB 95 as amended by the House Judiciary Committee adds on-duty firefighters and on-duty emergency medical technicians as separate classes of victims in addition to law enforcement officers.

Synopsis of HJC Amendment

The House Judiciary Committee amendment includes first responders as well as law enforcement officers.

Synopsis of Bill

HB 95 proposes to amend the Hate Crimes Act to provide a sentence enhancement when an individual commits a crime motivated by hate against a law enforcement officer.

The LOPD provided the following definition of a hate crime: "a crime in which the defendant intentionally selects a victim because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." (Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, 108 Stat. 1796 Section 280003 (1994) emphasis added (codified in part at 28 U.S.C. Section 994 (1994).)

FISCAL IMPLICATIONS

The inclusion of additional classes could lead to additional costs for judge and courtroom staff time, courtroom availability, and jury fees.

The AOC states “as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification.”

The AOC also stated that there would 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, and appeals from convictions. 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.

Enhanced sentences over time will increase the population of New Mexico’s prisons and long term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison is an average of \$123 per day, or about \$45,250 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCDs general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

SIGNIFICANT ISSUES

The AOC points out that Section 31-18B-3 NMSA 1978 already provides for sentence enhancements when a crime is motivated by hate:

- *noncapital felony* - basic sentence of imprisonment may be increased by one year (Subsection A)
- *petty misdemeanor or misdemeanor* - basic sentence of imprisonment may include an alternative sentence that requires community service, treatment, education or any combination thereof (Subsection D).

The AOC also provided information on other states' efforts to include voluntary occupations other than police officers, such as such as correctional officers and firefighters, in hate crimes laws. In Florida, a bill is making its way through house committees that would apply Florida's hate crimes law to offenses against judges, correctional officers, probation officers and first responders. ("*House Bill Extends 'Hate Crimes' Law to Judges,*" February 3, 2016, CBS Miami) Efforts to include law enforcement officers and other first responders are underway in Maryland, as well, as that state's HB 50 moves through committees.

The AOC added that it can be argued that rather than including a voluntary profession in the same category mostly comprised of traits considered immutable (e.g. race, color, national origin, ancestry, age, gender, sexual orientation), the legislature could provide sentence enhancements to specific crimes, when committed against on-duty firefighters or emergency medical technicians, or other specified occupations.

NMSC provided information from the National Law Enforcement Officers Memorial Fund (NLEOMF). The Fund reported there were 126 federal, state, local, tribal, and territorial officers killed in the line of duty in 2014, compared to 102 in 2013.

The Fund also stated that the 50 officers killed by firearms in 2014 was 56 percent higher than the 32 officers killed by firearms in 2013. Ambush-style attacks, as evidenced by the shooting deaths of New York City Police Officers Wenjian Liu and Rafael Ramos while sitting in their marked patrol car, were the number one cause of felonious officer deaths for the fifth year in a row. Fifteen officers nationwide were killed in ambush assaults in 2014, matching 2012 for the highest total since 1995.

The Attorney General stated that the bill "will add to the class of victims protected under the current act a group that is not traditionally or historically considered to need heightened protections—law enforcement officers. While case law holds that it is solely within the province of the legislature to establish penalties for criminal behavior, See *State v. Lack*, 98 NM 500, case law interpreting Article II, Sec. 18 of the NM Constitution, holds that the legislature can classify a group and adapt laws regarding that class so long as the laws are rationally based. Furthermore, the law must be reasonable and not arbitrary."

The AOC stated that New Mexico already provides enhanced penalties for some crimes committed against peace officers. For aggravated assault, Section 30-22-22 NMSA 1978 provides a third degree felony for aggravated assault while Section 30-3-2 NMSA 1978 provides a fourth degree felony for "simple" aggravated assault. If the victim was a peace officer acting in

the lawful discharge of an official duty when he or she was murdered, Section 31-20A-5 NMSA 1978 provides as an aggravating circumstance to be considered by the sentencing court or jury in a capital felony case mandating a sentence of life imprisonment without possibility of release or parole.

Both the LOPD and the AOC also provided information from legal experts who warn that including a voluntary profession in the same category of traits consider involuntary could be dangerous. The AOC provided the following: “to include a status [like law enforcement] would open the floodgates of different groups demanding that they also be added to this list,” George Washington University law professor Jonathon Turley told U.S. News earlier this year. “The implication could be that the law could be expanded to include a great variety of positions, based on future request. (“Should attacking police officers become a hate crime? A Minnesota city says yes.” Yanan Wang, The Washington Post, October 8, 2015)”

The LOPD stated that an individual's status as a peace officer is not a personal characteristic and law enforcement officers have not historically required specific protection against discrimination. The intent of the Act is to protect immutable characteristics like gender and race as opposed to an occupation – a chosen status. Crimes committed against law enforcement officers are already treated very seriously, as referenced *supra*.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the performance measures of the district courts, including cases disposed of as a percent of cases filed and percent change in case filings by case type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 202, which also amends Section 31-18B-2 NMSA 1978 to expand the definition of “motivated by hate” to mean the commission of a crime with the intent to commit the crime because of the actual or perceived homelessness of the victim.

TECHNICAL ISSUES

The Attorney General’s Office pointed out that the term “law enforcement officer” is not defined in the definitions section of the proposed act. However, Section 31-1-2(F) NMSA 1978 defines the term to include police officers, peace officers and officers. It may provide clarity to add a definition for the term or reference the definition provided in Sec. 31-1-2(F) NMSA 1978. If police officers, peace officers and officers are not to be included in the protected class, the act should be amended to indicate the limited definition law enforcement officer.

TMR/al/jo/jle