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FISCAL IMPACT REPORT

ORIGINAL DATE 1/19/2017

SPONSOR Gentry LAST UPDATED _____ HB 79

SHORT TITLE Hate Crimes Against Law Enforcement SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	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)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of Bill

HB 79 would add “...law enforcement officer; (and) ...firefighter or an emergency medical technician when the person is on duty as a firefighter or an emergency medical technician” to the existing list of persons covered by the Hate Crimes Act. If the crime(s) committed against them were motivated by hate because of their status the presumptive punishment for the offense(s) may be increased.

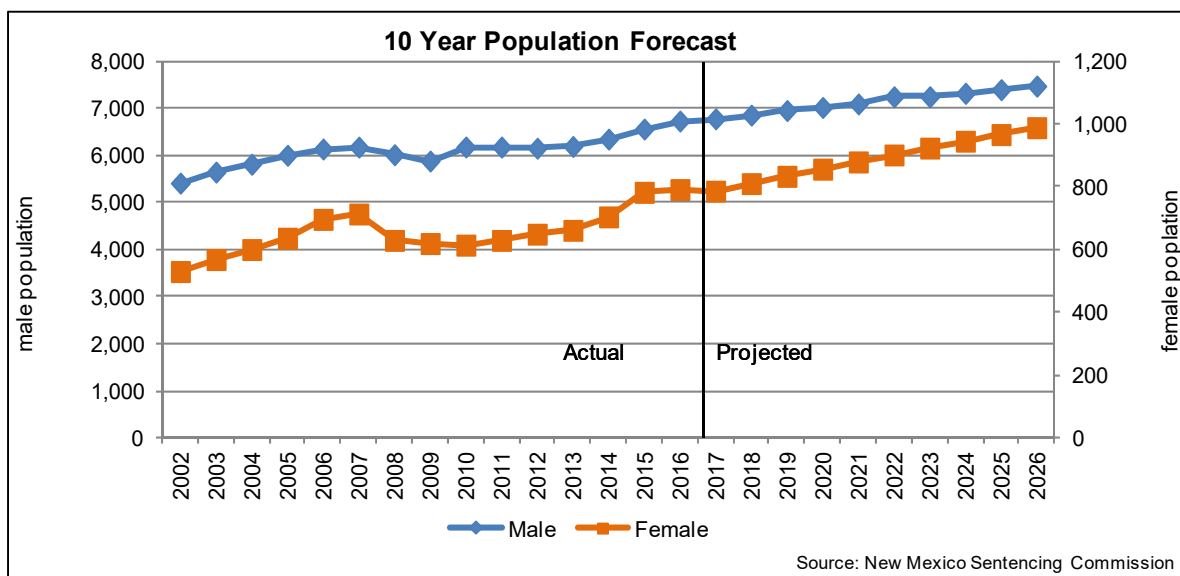
FISCAL IMPLICATIONS

The AGO states “increased sentences always increase the costs of incarceration. In addition, persons facing a longer sentence are more likely to opt for a jury trial, thus increasing costs to the courts, district attorneys, public defenders and the Attorney General’s office.”

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. An 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. NMCD’s general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate’s needs.

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, losses in future earnings, and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.



SIGNIFICANT ISSUES

The AODA explains:

The expansion of the Hate Crimes Act proposed in HB 79 would only apply to crimes against law enforcement officers, and to on-duty firefighters and emergency medical technicians (EMT), in which the offenses were “motivated by hate” against them because of their status as reported in a special interrogatory for jury trials or a special finding of fact for bench trials. It is unclear why a hate crime could be charged any time a law enforcement officer was the victim of a non-capital felony, but firefighters and EMT’s must be “on duty” for it to apply to them. (Cf., *Schultz v. Pojoaque Tribal Police Dep’t.*, 2014—NMCA—019 (Survivors of policeman who drowned during an attempted rescue was entitled to pursue worker’s compensation benefits even though the officer was off-duty, not on call and was out of his jurisdiction.)

Motive is not required to be proven for someone to be found guilty of a crime so pursuing an offense as a hate crime will add to the proof requirements. This is especially so because anything that increases the basic punishment for a criminal conviction, other than a prior conviction, must be proven beyond a reasonable doubt. See, *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *State v. Frawley*, 2007-NMSC-057. There appear to be no reported

cases interpreting New Mexico’s Hate Crimes Act, and the burden of having to prove not just the crime but also the motive, beyond a reasonable doubt, is undoubtedly a significant factor in the paucity of cases litigated and appealed.

There is usually no direct evidence on motive so trying to prove a crime was committed against a law enforcement officer, or an on-duty firefighter or EMT, was motivated by hate because of their employment status will be difficult. Defendants can easily claim that their offenses against law enforcement officers and on-duty firefighters and EMT’s were not motivated by hate of their victim’s status but occurred because of other circumstances. If cases against them are charged as hate crimes, then the ensuing litigation will be more complicated than if a hate crime charge was not pursued.

Defendants charged with a hate crime against a law enforcement officer may claim a double jeopardy violation because crimes against peace officers already carry enhanced penalties compared to the same offense against someone not in law enforcement. Cf., e.g., Sect. 30-22-21, NMSA 1978, Assault Upon A Peace Officer (misdemeanor) and Sect. 30-3-1, 1978, Assault (petty misdemeanor), Sect. 30-22-23, NMSA 1978, Battery Upon A Peace Officer (fourth degree felony) and Sect. 30-3-4, NMSA 1978, Battery (petty misdemeanor).

Virtually all of the other protected classes listed in the Hate Crimes Act: race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation and gender, are given special protections in other laws so there is guidance to interpret potential hate crimes against them that will be lacking if law enforcement officers, and on-duty firefighters and EMT’s are included in the Act. See e.g., New Mexico Human Rights Act, Sects. 28-1-1 to 13, NMSA 1978; *Elane Photography, LLC v. Willock*, 2013—NMSC--040, (Public business may not refuse services at civil commitment ceremony of same sex couple), *Griego v. Oliver*, 2014—NMSC—003, (Same sex couples may be married under NM law), *Garcia v. Hatch Valley Public Schools*, 2016—NMCA—034 (Reverse discrimination against Caucasian person prohibited).

The AGO states:

The bill will add to the class of victims currently protected under the act, a group that is not traditionally or historically considered to need heightened protections - law enforcement officers, firefighters and emergency medical technicians. These are voluntary professions, not immutable personal characteristics such as race, gender, age, ethnicity or disability. It is likely that other chosen professions would demand inclusion in this act.

Current laws already enhance crimes committed against peace officers. Aggravated assault is increased from a fourth degree felony (§30-3-2) to a third degree felony when committed upon a peace officer (§30-22-22). Assault with intent to commit a violent felony is increased from a third degree felony (§30-3-3) to a second degree felony when committed upon a peace officer (§30-22-23). Aggravated battery is increased from a misdemeanor (§30-3-5(B)) to a fourth degree felony when committed upon a peace officer (§30-22-25(B)). And, when the victim of first degree murder is a peace officer, the sentence is increased from life imprisonment to life imprisonment without possibility of release or parole (§§ 31-20A-2, 31-20A-5(A)).

Emergency medical technicians also enjoy increased penalties for assaults and batteries committed against them (§30-3-9.2) as do health care workers, school personnel (§30-3-9), and sports officials (§30-3-9.1). These statutes do not require a hateful motivation.

TECHNICAL ISSUES

The AGO states “law enforcement officer” is not defined in the proposed bill. The sponsor may wish to consider Section 31-1-2(F) which defines “law enforcement officer” as “any full-time salaried or certified part-time salaried officer who by virtue of office or public employment is vested by law with the duty to maintain the public peace.” Also, it would be helpful to clarify whether this term includes private security or public aide officers.

OTHER SUBSTANTIVE ISSUES

The AODA states “there are statutes already in place regarding peace officers that provide increased penalties for crimes against them. See, Sections 30-22-21 to 30-22-27, NMSA 1978.”

The AGO explains “when read in conjunction with existing law, this bill would provide more severe penalties for hate crimes committed against law enforcement, firefighters and EMTs than for hate crimes committed against those persons currently protected under the Hate Crimes Act.”

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