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FISCAL IMPACT REPORT

ORIGINAL DATE 2/07/17

SPONSOR Herrell/Armstrong, D **LAST UPDATED** 3/16/17 **HB** 146/HJCS/ec

SHORT TITLE Protection of Vulnerable Adults **SB** _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 85.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Office of the Attorney General (OAG)
- New Mexico Corrections Department (NMCD)
- Administrative Office of the Courts (AOC)
- Aging and Long Term Services Department (ALTSD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 146 creates the crime of financial exploitation of vulnerable adults and provides penalties.

Section 3 of HB 146 includes a number of criteria that may constitute financial exploitation. To summarize the relevant portions, it defines financial exploitation as knowingly and willfully obtaining or using the funds, assets or property of a vulnerable elder with the intent to defraud the elder or knowingly and willingly making an inter vivos transfer with the intent to defraud a vulnerable elder.

In addition, the bill changes the name of the act to Protection Against Financial Exploitation of Vulnerable Elders Act and applies to persons sixty-five years and over who, due to aging, lack the ability to care for or protect themselves from exploitation.

Penalties range from a petty misdemeanor for acts involving \$250 or less; a misdemeanor for property valued between \$250 and \$500; a fourth-degree felony for property valued between \$500 and \$2,500; a third-degree felony for property valued between \$2,500 and \$20,000; and a second-degree felony for property valued over \$20,000.

FISCAL IMPLICATIONS

The OAG states “since the scope of the population protected by HB 146 in the Committee Substitution has narrowed significantly, there would be fewer fiscal implications with regard to training on the specific issues related to that population. There would still be some costs and resources associated with prosecuting a newly created crime.”

ALTSD believes there is no fiscal impact as a result of the bill.

NMCD explains the bill could increase the number of offenders placed on magistrate court misdemeanor probation, which is currently a limited number based on parameters set forth in a MOU between NMCD and Administrative Office of the Courts. If the bill results in high amounts of restitution being owed by numerous misdemeanor offenders, more of these offenders are likely to be placed on probation with the NMCD.

NMCD does not incarcerate or supervise on probation petty misdemeanor offenders. NMCD does not normally incarcerate misdemeanor offenders and only supervises misdemeanor offenders on probation in a limited number of cases. Fourth degree felonies carry a potential incarceration term of 18 months in prison, but the sentencing judge can order probation in lieu of incarceration. Third degree felonies carry a potential incarceration term of three years in a NMCD prison (or probation ordered by the judge in lieu of incarceration), but the incarceration period increases to six years if the felony results in the death of a person. Second degree felonies carry a potential incarceration term of nine years (or probation ordered by the judge in lieu of incarceration), but the term increases to fifteen years if the felony results in the death of a person. If an offender is sentenced to any term of imprisonment in prison, a parole term is attached. A parole term for a fourth degree felony is one year, and is two years for a third and second degree felony.

NMCD states “it is difficult to estimate the fiscal impact of this or any new crime bill. However, the bill creates several new misdemeanor and felony crimes. The department therefore reasonably estimates that the bill may result in a minimal to moderate increase in the number of offenders sentenced to NMCD custody and placed on probation and parole caseloads.”

AOC analysis explains 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.

SIGNIFICANT ISSUES

ALTSD explains that between 1 million and 2 million people aged 65 and older have been abused, neglected or exploited, according to the Centers for Disease Control and Prevention. More than 90 percent of acts are “perpetrated by family members with substance abuse issues, a

poor financial situation, extreme levels of stress or an inadequate understanding of the needs of the vulnerable adult (Florida Department of Elder Affairs and the Florida Department of Children and Families, The Power to Prevent Elder Abuse is in Your Hands).”

According to ALTSD, “the Adult Protective Services (APS) Act mandates that any person who suspects that a vulnerable adult has been abused, neglected or exploited has an affirmative obligation to report to APS to provide for the health, safety and welfare of the vulnerable adult. § 27-7-14 et seq. Reporting is required under the APS Act regardless of whether the vulnerable adult consents. If the vulnerable adult cannot give consent, then the vulnerable adult’s legal representative or another individual who suspects abuse, neglect or exploitation must report to APS, regardless of whether he or she believes the action is necessary for the immediate health, safety or welfare of the vulnerable adult.”

The AOC explains “although this substitute bill makes it a crime to financially exploit a person over the age of sixty-five years old, it fails to provide similar protections for a protected person under a court-appointed guardianship or conservatorship. It is important to note that individuals under a court-ordered guardianship or conservatorship are also subject to financial exploitation and, as written, this substitute bill would not provide any protections for a protected person if they are less than sixty-five years old.”

AOC also states “Section 3 has also been changed to define financial exploitation of a vulnerable elder to consist of “knowingly or willfully obtaining or using the funds, assets or property of a vulnerable elder with the intent to defraud the elder.” This definition of financial exploitation would not include using the vulnerable elder’s funds, assets or property for the benefit of another person. An example of this situation is when an individual uses a vulnerable person’s funds to purchase a very expensive vehicle under the guise of needing reliable transportation for the vulnerable person. Another scenario is when a person moves into the vulnerable person’s home to providing care giving services and buys new televisions, orders cable and internet services, and uses the vulnerable person’s funds to pay for the “caregiver’s” food, clothing and other personal items.”

The OAG explains “the definition of “vulnerable elder” may be vague and therefore prove to be inconsistently applied. The substitution is essentially a law against defrauding the elderly, which is encompassed in existing law criminalizing fraud in general. There is a provision that would make certain very specific conduct prima facie evidence of fraud; however, given the number of qualifications in this provision, it may be difficult to meet the requirements.

ALTERNATIVES

In November 2016, ALTSD entered into a memorandum of understanding with the Securities Division of New Mexico’s Regulation and Licensing Department (RLD) regarding the financial exploitation of vulnerable adults. As RLD has deputized law enforcement officers as well as prosecutors, it is able to investigate and prosecute financial exploitation of vulnerable adults under limited circumstances.

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