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## FISCAL IMPACT REPORT

SPONSOR Brandt ORIGINAL DATE 02/05/21  
LAST UPDATED 02/17/21 HB \_\_\_\_\_  
SHORT TITLE Threat of Shooting SB 142/aSHPAC  
ANALYST Eckberg

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
New Mexico Attorney General (NMAG)  
New Mexico Sentencing Commission (NMSC)  
Public Defender Department (PDD)

### **SUMMARY**

#### Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 142 changes making a shooting threat from a fourth degree felony to a misdemeanor. A court may order a person convicted of making a shooting threat to imprisonment in a county jail for less than one year or subject to a fine of not more than one thousand dollars, or both. A court may also order a person convicted for making a shooting threat to reimburse the victims of the offense for economic harm caused by the offense.

#### Synopsis of Original Bill

Senate Bill 142 amends Section 30-20-16 NMSA 1978 to add making a shooting threat a fourth degree felony.

Making a shooting threat is falsely and maliciously making a statement to another person

threatening to bring a firearm to a property or use the firearm to (1) place a person or group of persons in fear of great bodily harm, (2) prevent or interrupt the occupation or use of a public building, or (3) cause a response to the threat by an official or volunteer agency organized to deal with emergencies.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

The Sentencing Commission (NMSC) originally indicated enactment of SB142 would likely lead to more people being incarcerated by the Corrections Department at an average per day cost of \$122.85 for an average length of stay for public order felonies of 460 days. However, with the amendment changing the offense to a misdemeanor, there likely will not be a significant impact on the prison population.

The Administrative Office of the Courts (AOC) indicates the direct fiscal impact would be related to the prosecution, defense, trial, and any subsequent confinement of individuals making shooting threats. With shooting threats being charged as a misdemeanor rather than a felony, the burden would reside within the magistrate court system rather than the district court.

Public Defender Department (PDD) notes the creation of any new crime is likely to create new prosecutions and additional clients for them. The increase in prosecutions would increase LOPD's overall workload.

## **SIGNIFICANT ISSUES**

The Office of Attorney General (NMAG) notes the language for the shooting threat addresses only false threats; threats made with the intent to follow through on the threat are not criminalized in this bill or existing statute.

PDD notes this bill proposes to create a crime for threatening to use a firearm *with the intent* to place people in fear of great bodily harm but does not actually require that a person experience that fear. Assault under current law requires the victim actually experience fear of imminent great bodily harm. Here, there is no requirement of imminence and no requirement that a person actually suffer the intended fear. Similarly, SB142 does not require the disruption of occupation or use of public buildings actually occur or that emergency responders actually react.

PDD also notes it is currently a misdemeanor (when it is a first offense) to use a telephone to threaten to inflict injury or physical harm to the person or property of any person. With the proposed elements of this crime, there are likely to be double jeopardy problems, confusion as to which is the more specific crime to charge, or both.

AOC and PDD raise concerns that criminalizing the communication of someone's "intention" to commit an act without additional elements of a crime have First Amendment freedom of speech implications.

Additionally, AOC notes shooting threats for schools are often perpetrated by juveniles and reducing the penalty for shooting threats to a misdemeanor will allow investigation by law

enforcement without the exposure of the juvenile to a felony charge.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to SB182 Threatening a Public Official Crime.

**TECHNICAL ISSUES**

PDD notes the newly added Subsection E may be unnecessary as it specifies misdemeanor penalties by cross-referencing Section 31-19-1 NMSA 1978, but that statute would apply without reference. Similarly, authorizing victim restitution may be unnecessary because Section 31-17-1 NMSA 1978 (Victim restitution) also applies without requiring explicit authorization.

NMSC notes new language added by the amendment, Subsection E, should read that a person may be sentenced according to Section 31-19-1 NMSA 1978, which is the statute governing sentencing of misdemeanors, and order reimbursement. NMSC indicates that part of the amendment needs to be struck and re-amended to be clearer.

The Administrative Office of the District Attorneys notes the language “falsely” and “maliciously” in the conjunctive is likely to cause confusion in prosecuting these cases. “Falsely” is defined as designedly untrue and deceitful and as implying an intention to perpetrate some treachery or fraud. (*Black’s Law Dictionary*) “Maliciously” is defined as “imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and may consist in direct intention to injure, or in reckless disregard of another’s rights.” (*Black’s Law Dictionary*) The obvious defense to this charge will be that the person making the threat was only joking. However, it appears the intent of the statute is to prevent either the joking threat or the serious threat from causing the type of injury described in subsection B (1), (2) and (3). Page 1, line 25 and page 2, lines 1-6.

The Administrative Office of the Courts notes there may be a need to clarify what is intended by the use of the word “stating.” Shooting threats, in this proposal, consists of “falsely and maliciously stating to another person...” In common usage, this means “to say or write something, especially clearly or carefully,”<sup>1</sup> or “to express the particulars of especially in words.”<sup>2</sup> This may create confusion as to whether or not this bill also includes pictures or nonverbal body language, like gestures, and if it includes social media posts.

**OTHER SUBSTANTIVE ISSUES**

PDD and AOC expressed concerns that minors will be prosecuted for false threats despite the fact that no actual harm would be caused. The statute specifically punishes insincere threats (many of which would be made by children who may say things without appreciating their seriousness) because it specifically proposes to criminalize false statements.

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<sup>1</sup> <https://dictionary.cambridge.org/us/dictionary/english/stating>

<sup>2</sup> <https://www.merriam-webster.com/dictionary/state>