

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov).

FISCAL IMPACT REPORT

Lane/Hochman-
 Vigil/Martinez/Lente/ **ORIGINAL DATE** 1/28/2022
SPONSOR Chasey **LAST UPDATED** 2/8/2022 **HB** 99/aHCPAC

SHORT TITLE Crime of Threatening a Judge **SB** _____

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$0.0	\$164.1	\$232.0	\$396.1	Recurring	General Fund
Costs to Counties	At least \$4.8 to \$9.6	At least \$9.6 to \$19.2	At least \$9.6 to \$19.2	At least \$24.0 to \$48.1	Recurring	County General Funds
Total	At least \$4.8 to \$9.6	At least \$173.7 to \$183.3	At least \$241.6 to 251.2	At least \$420.1 to \$444.1	Recurring	State and County General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs amendment to House Bill 89 amends the definitions of “judge” and “personal information,” and adds a definition of “retaliate.” The changes are as follows:

- “judge” is redefined as a current or former justice, judge, magistrate, domestic violence special commissioner, or hearing officer.
- “personal information” is redefined to specify that it includes the person’s *personal* physical address or phone number. The amendment also removes email from the

definition.

- “retaliate” is defined as intentionally threatening bodily injury to or damage to the property judge or immediate family member with the intent to retaliate against the judge for the exercise of their judicial duties and causing the individual to reasonably believe their person or property is in danger.

Synopsis of Original Bill

House Bill 99 creates the new crimes of threatening a judge or an immediate family member of a judge (a fourth-degree felony) and maliciously sharing personal information of a judge or an immediate family member of a judge (a misdemeanor).

The crime of threatening a judge or immediate family member consists of issuing such threats with the intent to place the threatened individual in fear of great bodily harm, prevent or interrupt the judge’s ability to carry out their job duties, or retaliate against a judge on account of the performance of their official duties during their term of service.

The crime of maliciously sharing personal information of a judge or an immediate family member of a judge consists of sharing such information with the intent to cause harm to the judge or family member, place that individual in fear of great bodily harm, or prevent or interrupt the judge’s ability to carry out their job duties.

The bill establishes the following definitions:

- “immediate family member” is a spouse, child, sibling, parent, grandparent or grandchild, stepparent stepchild, stepsibling and an adoptive relationship.
- “judge” is a district court, appellate, metropolitan court, magistrate judge, probate judge, or supreme court justice. *This definition is changed by the HCPAC amendment.*
- “personal information” is a person’s physical address, phone number, email, or physical location. *This definition is changed by the HCPAC amendment.*

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

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in jail or prison that might result from this bill. The creation of any new crime, increase of felony degree, or increase of sentencing penalties could increase the population of New Mexico’s prisons and jails and long-term costs to state and county general funds. This bill could increase the number of individuals incarcerated in both state prisons and county jails.

The newly created crime of threatening a judge or an immediate family member of a judge is a fourth-degree felony, which carries an 18-month prison sentence; the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was 516 days. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY21 was \$49.6 thousand; however, due to the high fixed costs of the state’s prison facilities and administrative overhead, LFC estimates a marginal cost (the cost

per each additional inmate) of \$23.4 thousand per inmate per year across all facilities. Each offender sentenced to prison under this bill could therefore result in estimated increased costs of \$33.1 thousand to NMCD. The Administrative Office of the Courts (AOC) tracks threats made against courts and state judges and reports eight threats against courthouses and seven against judges in 2020. Assuming threats against courthouses would constitute threats against judges for purposes of HB99 and assuming slightly under half of these threats would result in an individual being admitted to prison, this analysis estimates this new crime will result in an additional seven individuals being admitted to prison each year, an increased cost of \$232 thousand annually. These additional costs will begin to be realized in FY24 (accounting for some time to adjudication) increasing the following year as an offender admitted in FY24 serves the remainder of their term, and another offender is admitted.

The newly created crime of maliciously sharing personal information of a judge or an immediate family member of a judge is a misdemeanor offense, which is punishable by up to a year in jail. For purposes of this analysis, it is estimated that an individual could spend between six months and one year incarcerated for this offense. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. Each offender sentenced to jail under this bill could therefore result in estimated increased costs of \$9,614 to \$19.2 thousand per year to counties. This analysis assumes at least one individual per year is sentenced to jail for this offense. To account for time to adjudication, no costs are anticipated to be incurred until six months into FY23, so the cost for FY23 is prorated to account for this, while the costs in FY24 and future fiscal years are estimated at the full annual cost.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs to law enforcement to investigate and arrest individuals for the new crimes under HB99 are not included in this analysis, but could be significant. Both the Public Defender Department (PDD) and AOC anticipate they will incur additional costs as a result of this bill.

SIGNIFICANT ISSUES

AOC reports there has been an increase of over 300 percent in the number of threats and inappropriate communication directed against federal judges and other members of the federal judiciary between 2015 and 2020, according to the U.S. Marshals Service. AOC tracks threats made against courts and state judges in New Mexico and reports eight threats against courthouses and seven against judges in 2020.

PDD notes that threatening anyone in a manner that places them in fear of an imminent battery is already petty misdemeanor assault, but HB99 does not require imminence or that a person's fear be reasonable. PDD states this "is especially problematic given that this new crime constitutes a fourth-degree felony with collateral implications down the line."

The Administrative Office of the District Attorneys suggests making the crime of maliciously sharing personal information of a judge or an immediate family member of a judge a fourth-degree felony, rather than a misdemeanor.

Constitutional Concerns. The Sentencing Commission (NMSC) notes potential First Amendment concerns involved in criminalizing threats or the malicious sharing of information.

PDD notes that the bill does not define what conduct would be considered prevention or interruption of a judge's job duties, which could result in the law being interpreted to include unintended conduct. PDD raises concerns that not defining conduct by the perpetrator could result in challenges on the basis of "void-for-vagueness" under the Fifth and Fourteenth Amendments of the U.S. Constitution and Article II, Section 18 of the New Mexico Constitution.

ER/rl/acv