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FISCAL IMPACT REPORT

SPONSOR Brandt **ORIGINAL DATE** 1/28/22 **LAST UPDATED** 2/3/22 **HB** _____
SHORT TITLE Threat of Shooting **SB** 34/aSJC
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	At least \$24.0 to \$48.1	At least \$48.1 to \$96.1	At least \$72.1 to \$144.2	Recurring	County General Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 68

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment to Senate Bill 34 amends the definition of making a shooting threat to remove making a threat that another person intends to take action and changes the crime from a fourth-degree felony to a misdemeanor.

Synopsis of Original Bill

Senate Bill 34 amends Section 30-20-16 NMSA 1978 to add making a shooting threat an unlawful fourth-degree felony.

Under SB34, making a shooting threat consists of falsely and maliciously stating to another person that the person making the threat or another person intends to bring a firearm to a property or use the firearm with the intent 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.

As with the existing Section 30-20-16 NMSA 1978 crime of making a bomb scare, SB34 permits a court to order a person convicted for the offense of making a shooting threat to reimburse the victim of the offense for economic harm caused by that offense. “Economic harm” means all direct, incidental, and consequential financial harm suffered by a victim of the offense of making a shooting threat.

SB34 provides that Section 30-20-16 NMSA 1978 shall not be construed to limit a court’s authority to order restitution to a victim of the offense of making a shooting threat pursuant to other provisions of the law.

The effective date of the act is July 1, 2022.

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.

The maximum penalty offered under SB34 (as amended) is a misdemeanor offense, which is punishable by up to one 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.

It is difficult to estimate how many individuals will be charged, convicted, and/or serve prison time based on the creation of a new crime. However, the Educator’s School Safety Network reports there were 3,058 threats reported in K-12 schools nationally during the 2018-2019 school year, 28.2 percent of which were shooting threats (about 862). Assuming New Mexico schools receive a share of threats proportionate to the state’s share of the national population, the number of shooting threats received by schools alone would be about five. If each of these five threats resulted in a prison sentence under the new crime of making a shooting threat, the costs of incarceration to counties would be \$48.1 thousand to \$96.1 thousand per year. 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.

Significantly, this is likely an underestimate, as it only includes shooting threats against schools, while the definition of shooting threat in SB34 is much broader.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs of enforcement under SB34, are not included in this analysis.

SIGNIFICANT ISSUES

The Department of Public Safety (DPS), the Public Defender Department (PDD), and the Administrative Office of the Courts (AOC) all note significant concerns regarding the constitutionality of SB34. DPS explains, “In order not to run afoul of the First Amendment to the United States Constitution, states must refrain from criminalizing speech simply because it is false or offensive or believed to be false or offensive by many people...A state may, however, criminalize speech that constitutes a ‘true threat.’”

PDD and DPS note that the crime of making a shooting threat does not require the speaker to intend to communicate a threat of violence in order to intimidate an individual or group, for the victim to actually experience that fear, for any disruption to actually occur, or for emergency responders to actually react. The Attorney General’s Office further notes that the proposed bill only criminalizes *false* threats, while *excluding* true shooting threats.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed.
- Percent change in case filings by case type.

RELATIONSHIP

SB34 relates to House Bill 68, which creates the new crime of criminal threat.

TECHNICAL ISSUES

(1) 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,” (<https://dictionary.cambridge.org/us/dictionary/english/stating>) or “to express the particulars of especially in words.” (<https://www.merriam-webster.com/dictionary/state>) This may create confusion as to whether or not the requirement of “stating” in SB 34 also includes pictures or nonverbal body language, like gestures, and if it includes social media posts.

AMENDMENTS

To address the constitutional concerns noted above, DPS suggests revising Subsection B as follows:

Making a shooting threat consists of falsely and maliciously ~~stating~~
communicating to another person, in order to intimidate that person, that the

person ~~making the threat~~ or another person intends to bring a firearm to a property or use the firearm with the intent to inflict death or great bodily harm on an individual or group of individuals.

Additionally, Paragraphs 2 and 3 of Subsection B could be added to the definition of “economic harm” in Subsection E.

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