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FISCAL IMPACT REPORT

ORIGINAL DATE 02/18/09

SPONSOR Rehm LAST UPDATED _____ HB 517

SHORT TITLE No Civil Action For Injuries During Felonies SB _____

ANALYST Haug

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None		

(Parenthesis () Indicate Expenditure Decreases)

*See fiscal Implications

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Bernalillo County Metropolitan Court (BCMC)

SUMMARY

Synopsis of Bill

House Bill 517 would require that a court dismiss with prejudice a civil action brought by a person or a person's legal or personal representative for personal injury, property damage or death sustained while the person was committing or attempting to commit a felony or fleeing from the same. The commission or attempted commission of a felony shall be proven by (1) conviction for the felony or attempted felony, including a conviction based on a guilty or nolo contendere plea or (2) clear and convincing evidence that the conduct of the person constituted all the elements of the felony or attempted felony. A court may stay a civil action until final disposition of related criminal proceedings, and any applicable statute of limitations shall be tolled during the pendency of such criminal proceedings.

FISCAL IMPLICATIONS

House Bill 517 makes no appropriation. Some minor financial impact would result, according to the AOC, for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

The AOC states that this bill mandates the courts to dismiss qualifying cases, but it is unclear whether the court has a duty to do so sua sponte, upon motion of a party, or both. If the court has an independent duty to determine whether in fact a felony was committed or attempted, this bill could have an impact in terms of increasing the amount of time a judge spends in reviewing cases and also in improperly expanding the role of a judge in hearing such a case. The bill would have a lesser impact if the parties were required to raise the issue that a felony or attempted felony is involved as a threshold requirement to the court determining that a qualifying felony or attempted felony has occurred. The bill also puts the court in position of sorting out conflicting laws. This bill establishes an overlap of criminal and civil law which may not be appropriate. Civil law has defined the circumstances under which a tort action for injury to person and property can lie, and this bill may conflict or nullify such law by carving out an exception defined by a criminal case or by criminal law definitions of what constitutes a felony or attempted felony. Alternatively, this bill may duplicate elements or affirmative defenses which operate to nullify or offset a tort claim, e.g., comparative negligence, contributory negligence or assumption of the risk.

The BCMC notes that:

The law allows for inconsistent findings as to the guilt of the person with respect to the underlying felony. In providing that “*clear and convincing evidence* that the conduct of the person constituted all the elements of the felony or the attempt to commit the felony” would be sufficient to prove that the person committed or attempted to commit the felony, a verdict of not guilty at a criminal trial would not preclude a retrying of the issue in a civil trial. During the latter, the sued party need only show “clear and convincing evidence” that the plaintiff committed the felony or attempt, a lower standard than the “beyond a reasonable doubt” standard required in a criminal trial.

The bill is extraordinarily vague as to the element of causation in requiring a dismissal with prejudice if commission of the felony or attempt to commit the felony “in any way caused the injury.”

The language of the bill may also be sufficiently vague as to raise due process concerns.

GH/mc