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FISCAL IMPACT REPORT

ORIGINAL DATE 02/12/09
 SPONSOR O'Neill LAST UPDATED 03/20/09 HB 658/aHJC/aSJC
 SHORT TITLE Assault & Battery Upon Firefighters SB _____
 ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|----------------------------|----------------------------|----------------------|-------------------------|------------------|
| Total | | Indeterminate See Below | Indeterminate See Below | | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to HB 658 adds language stating that no prosecution shall be commenced against a person who commits an assault or battery upon a firefighter in an attempt to rescue a person, a domestic animal or a thing of value.

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 658 removes the definition of firefighter and replaces it with the following:

"firefighter" means any full- or part-time member or a volunteer member of a fire department that is part of or administered by the state or any political subdivision of the state and any red-carded firefighter trained in wild land firefighting skills and hired by the state of New Mexico, with the exception of those individuals who do not have any contact with members of the public or volunteer members who are inactive.

Synopsis of Original Bill

House Bill 658 amends Section 30-3-9.2 NMSA 1978 to include firefighters along with health care workers and create the new crimes of assault and battery upon a firefighter. As with health care workers, the firefighter must be in the lawful discharge of the firefighter's duties, meaning engaged in the performance of the duties of a firefighter. The penalties are the same as for assault and battery upon a health care worker and are as follows:

- Assault = misdemeanor
- Aggravated assault = third degree felony
- Assault with intent to commit violent felony = second degree felony
- Battery = fourth degree felony
- Aggravated battery (injury) = fourth degree felony
- Aggravated battery (great bodily harm) = third degree felony
- Assisting/assisted in committing battery = fourth degree felony

HB 658 defines “firefighter” to mean a person who is employed as a full-time non-volunteer firefighter by the state or by a local governmental entity and who has taken the oath prescribed for firefighters.

FISCAL IMPLICATIONS

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

HB 658 does not increase penalties for the described crimes but merely expands the application of those penalties to include firefighters along with health care workers. Other specified persons against whom the commission of assault and battery will lead to increased penalties are school personnel and sports officials.

The HB 658 definition of firefighters does not include volunteer or privately employed firefighters. It is possible that a situation would occur where volunteer or privately employed firefighters assist professional firefighters. It may be appropriate to include volunteer and privately employed firefighters when assisting professional firefighters within the definition of “firefighters.”

PDD staff contacted Albuquerque Fire Department Lieutenant Reed Harry regarding this bill. Lieutenant Harry indicated that, while the majority of the injuries in his department occur when firefighters lift things, a big part of the firefighting job turns out to revolve around dealing with people who are somehow mentally impaired whether through abuse of drugs, alcohol, or through organic brain damage. Accordingly, firefighters are inhibited in their job performance by assaults and batteries upon them by the individuals whom they are trying to serve. Due to the nature of the firefighters' role, this inhibition of performance may not just harm the individual who is being assaulted, but the general public as well. Further, firefighters are not provided with the self-defense training or defensive or offensive weaponry that are given to police officers, yet they routinely are sent into situations that are every bit as dangerous. The lieutenant was of the opinion that passage of the statute could make it easier for firefighters to do their jobs.

PDD states that this bill addresses a shortcoming in the law with the intention of making society safer by protecting unarmed emergency responders. Since paramedics and other health care workers are already so protected, firefighters would seem to be a reasonable class to protect as well. The bill's effectiveness may be limited by the fact that those who assault firefighters appear to generally not be thinking clearly, which raises a question of how increased penalties would be a deterrent. Accordingly, particularly since firefighters are often operating in dark and smoky locals, the sponsor might consider amending the bill to insert language to the effect that a person must actually know or perhaps should know that the victim is a firefighter in the lawful discharge of his duties in order for the increased penalties to take effect. Since the public policy intended is to protect firefighters, such a modification would insure that the proposed statutory changes do so.

DPS suggests adding language to incorporate paramedics so they will also be protected by this bill. They also respond to incidents where they may be threatened or assaulted. Not all ambulance or paramedic services are attached to a fire department.

ADMINISTRATIVE IMPLICATIONS

The affected agencies should be able to handle the enforcement of the provisions in this bill as part of ongoing responsibilities.

DW/mt:svb