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FISCAL IMPACT REPORT

ORIGINAL DATE 01/22/09

SPONSOR SJC LAST UPDATED 03/09/09 HB _____

SHORT TITLE Revise Crime of Stalking SB 166/SJCS

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender (PD)
 Administrative Office of the District Attorney (AODA)
 Department of Corrections (DOC)

SUMMARY

Synopsis of SJC Substitute Bill

Senate Judiciary Committee Substitute for SB 166 clarifies the elements of the stalking statute, 30-3A-3 NMSA 1978. It removes the intent requirement and the reasonable person standard from the statute. Instead, it requires proof that the offender “knew or should know” that his conduct would place the victim in reasonable apprehension of death, bodily harm, sexual assault, confinement or restraint the victim or another individual. Additionally, the bill expands the definition of pattern of conduct by which an alleged stalker may stalk to include the use of a computer (cyber stalking). Most importantly, it removes the requirement of a victim being a household member as defined in the current statute.

FISCAL IMPLICATIONS

According to the AOC, 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

The bill would change the crime of stalking from a ‘specific intent’ crime, i.e., where the State is required to prove that the defendant intended the result of his action (the victim’s fear), to a ‘general intent’ crime, where the State need only prove that the defendant intended the actions in which he engaged, e.g., following or harassing. As the general intent crime places a lesser burden on the prosecution, it is possible that the State will charge more defendants with stalking than is currently the case. This would result in a minor increase in the number of criminal cases filed in court.

The jury instruction for this crime will have to be revised to track the changes in the law.

OTHER SUBSTANTIVE ISSUES

According to the District Attorney, this bill recognizes that stalking can be done by a variety of methods. It also recognizes that it is often done through third parties. It is likely to lead to more convictions for stalking, which is a serial crime and might be better addressed with these changes.

According to the Public Defender, neither the original nor the revised statute requires any proof that the person, in fact, feared for his safety. When there was an element of intent in the statute, it was not necessary to require proof that the victim was placed in fear. With the elimination of the intent requirement, a person could be convicted of this crime if he didn't know his conduct was frightening; was never told that his conduct was frightening; never intended to frighten anyone and did not frighten anyone. New Mexico's courts have held that our stalking statute is not unconstitutionally vague because it requires "evidence of an act, a threat, and criminal intent." State v. Duran, 126 N.M. 60, 67, 966 P.2d 768, 775 (N.M.App.1998). Because this revision removes the element of criminal intent, the entire statute may be found unconstitutional.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Prosecutions would continue under current law.

CS/mc