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FISCAL IMPACT REPORT

SPONSOR Candelaria ORIGINAL DATE 02/10/14
 LAST UPDATED _____ HB _____

SHORT TITLE Crime of Aggravated Harassment SB 316

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 316 would create a new crime of aggravated harassment, punishable as a fourth degree felony for a first offense and as a third degree felony for a second or subsequent offense. It defines aggravated harassment as “...harassment perpetrated by a person: whose actions can be reasonably believed to be motivated by any of the following, whether actual or perceived, with respect to an individual or a person with whom an individual is associated (and lists 16 specific categories, including race, religion, national origin, sex, gender identity, etc); (2) when the person is in possession of a deadly weapon; and, (3) when the victim is less than 16 years old.”

It would also define “pattern of conduct,” which is now included as part of the definition of the current crime of harassment in Section 30-3A-2(A) NMSA 1978, as “...two or more acts committed on more than one occasion, whether directly, indirectly or through third parties.”

FISCAL IMPLICATIONS

If passed the bill would create a new category of felony offenses for prosecutors, defenders, the courts and corrections to handle.

SIGNIFICANT ISSUES

The AODA provided the following:

If the existing definition of harassment is included in this bill it must not only be acts done for bad motives but “...must be such that it would cause a reasonable person to suffer substantial emotional distress see Section 30-3A-2(A) NMSA 1978. Proving—beyond a reasonable doubt—that at least two or more acts were committed on more than one occasion, that they were done because the victim was in one of the protected categories, and that they would cause a reasonable person substantial emotional distress, will be especially challenging. It will be even more difficult if the actions were directed at or focused upon “...a person with whom an individual is associated.”

There is rarely any direct evidence of an offender’s motive so proving someone was harassed because of their status in one of the designated categories can be difficult. By including a prohibition against “perceived” motivation for harassment, without clarification that it is the offender’s perception that matters, it could make the victim(s) responsible for determining whether an offender’s conduct was unlawful. It is a maxim of criminal law (with very few exceptions, mostly involving crimes against children), that an offender must have both a guilty hand and a guilty mind. Requiring both, for example, protecting against things like touching that might be unwelcomed by the recipient—who may have even thought the person touching them did so inappropriately, but if the person who touched them did so accidentally, they would not be guilty of a battery. It is unclear how the perception would apply if the acts were committed against a person with whom an individual in one of the protected categories is associated.

The AOC provided the following analysis:

The new crime of aggravated harassment duplicates substantially the Hate Crimes Act in Section 31-18B-3D NMSA 1978. The Hate Crimes Act states that if a petty misdemeanor or misdemeanor crime is motivated by hate, then the defendant may undergo community service, treatment, education or any combination thereof. It does not make the crime a felony, which the new statute would do. This bill selectively grants a more severe penalty to harassment if it is committed with motivation against a perceived or actual category of the victim than to any other misdemeanor crime. Under the Hate Crime Act a sentence for a felony offense motivated by hate is only enhanced by one year; this bill increases the sentence from a misdemeanor offense (364 days) to either a fourth degree (18 months) or third degree (3 years) felony. This could result in litigation as to which offense should be charged which would be costly in time, resources and finances for the judiciary.

EC/ds:jl