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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/2017

SPONSOR Rubio LAST UPDATED _____ HB 346

SHORT TITLE Exception for Assault on Health Care Workers SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate	Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 175, HB 242, and SB185.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Medical Board (MB)
 Miners' Hospital of New Mexico (MHNM)
 Board of Nursing (BN)
 Department of Health (DOH)
 Administrative Office of the Courts (AOC)
 Office of the Attorney General (OAG)

SUMMARY

Synopsis of Bill

House Bill 346 proposes an amendment to criminal statute 30-2-9.2 NMSA 1978 that creates an exception to the crime of committing assault or battery on a health care worker. In a new section, an exception is created that exempts from the criminal code a person who commits the assault or battery who was suffering from a serious mental illness, "characterized by defective or lost contact with reality, often with hallucination or delusions."

FISCAL IMPLICATIONS

The AOC explains HB 346 could decrease costs in some areas and increase costs in others. If fewer individuals are sentenced to prison for assault and battery upon a health care worker, there may be savings to the state. However, the opposite is true for the courts because defendants may

invoke their right to trial and their right to trial by jury to assert the mental illness exception to assault and battery upon a health care worker. HB 346 makes prosecution more complex if the issue of the existence of a serious mental illness must be litigated. More trials will require additional judge time, courtroom staff time, court room availability and jury fees (the current fiscal year has shown that jury fees have a major impact on the judiciary's and state's budget), as well as related increased appeals. It is possible more defendants will be acquitted by reason of serious mental illness.

AOC also explains there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase. AOC is currently working on possible parameters to measure resulting case increase and the costs thereof.

It is costly for the corrections department to house mentally ill offenders, should they be sentenced to incarceration in state facilities. The mental health unit at the Central New Mexico Correctional Facility in Los Lunas has 88 beds – on November 18, 2016, 68 were filled. Additionally, it is expensive to incarcerate mentally ill individuals and maintain their health and safety as well as the remainder of the incarcerated population. Reductions in the number of mentally ill inmates sentenced to the department could help reduce costs within state prisons. The LFC does not have data on how many mentally ill inmates have been sentenced to prison due to assault or battery of a health care worker.

SIGNIFICANT ISSUES

The Board of Nursing states the bill does not indicate or provide guidance as to who is responsible for issuing the diagnosis of the serious mental illness associated in this section or address the time frame in which a diagnosis can be made. For example, “would the diagnoses need to be made prior to the act of the assault or post the assault in order to qualify for the exception?” Additionally, there is concern that front line health care workers, such as nurses, would be subject to abuse or assault by patients or healthcare consumers who would later make false claims of being delusional at the time of the assault to avoid prosecution.

The Board of Nursing expressed concern the definition of health care worker does not include those working in nursing homes, schools, public health offices, or long term residential care facilities, and legitimately employed health care workers don encounter mentally ill patients in these settings. Additionally, volunteers such as nurses who volunteer at homeless shelters or clinics for the homeless, or other social service centers that assist the mentally ill would not be included.

The OAG and Board of Nursing explains there is no definition for “serious mental illness” included in the bill. OAG states that while there is a definition section in the bill, “HB 346 does not make any amendment to include a serious mental illness definition. Instead, the amendment identifies symptoms and/or behaviors of ‘lost contact with reality, often with hallucination or delusions.’ This may be too broad or vague as written.”

OAG also explains that “it is unclear who makes the assessment of the serious mental illness, when the assessment is made, who makes the determination that there is a serious mental illness and what the criteria are for that determination. As it stands, sections 31-9-1 through 31-9-2

govern competency and mental illness evaluation procedure, which requires a defendant's competency be evaluated by a psychologist, psychiatrist or other qualified professional recognized by the district court as an expert, however, HB 346 is silent as to the procedure to be applied. It is unclear whether HB 346 exception to the Assault & Battery on a Health Care Worker is to be asserted as an affirmative defense at trial or if the decision that the exception should be applied is made by arresting law enforcement or as a charging decision for a prosecutor.”

The AOC submits the following analysis:

The chances of health care workers encountering patients with mental illness are quite high. According to the National Alliance on Mental Illness (2015), individuals living with serious mental illness face an increased risk of having chronic medical conditions. Adults in the U.S. living with serious mental illness die on average 25 years earlier than others, largely due to treatable medical conditions. Of all illnesses that are known to cause disabilities in the U.S., Canada and Western Europe, mental illnesses ranks first. Approximately 1 in 5 adults in the U.S. - 43.8 million, or 18.5 percent - experiences mental illness in a given year. Approximately 1 in 5 youths aged 13–18 (21.4 percent) experiences a severe mental disorder at some point during their life. For children aged 8–15, the estimate is 13 percent. An estimated 26 percent of homeless adults staying in shelters live with serious mental illness and an estimated 46 percent live with severe mental illness and/or substance use disorders. Approximately 20 percent of state prisoners and 21 percent of local jail prisoners have “a recent history” of a mental health condition. It is estimated that two million New Mexicans live with a serious mental health condition; this represents 1 of every 4 adults.

If HB 346 is enacted, it is possible more defendants will be acquitted of assault and battery on a health care worker by reason of serious mental illness. Jurors may have a very hard time reaching acquittal, but they may feel that it is the only way to acknowledge mental problems the defendant may have, and treatment the defendant may need. However, this reasoning is not based on the current reality of mental health treatment in New Mexico. UNM has pointed out the lack of provider resources in many areas of the state and the service gaps in needed levels of care. Over time the behavioral health infrastructure in New Mexico has degraded significantly, (especially in recent years), which has created significant challenges for mental or behavioral health patients being able to access needed services. Primary care clinics regularly identify individuals in need of care, making referrals for specialized mental or behavioral health assessments or services, but few qualified behavioral health providers are available (Independent Assessment of New Mexico's Medicaid Managed Care Program –Behavioral Health Statewide Entity, June 2013).

If a defendant is found guilty and is sentenced to prison, the corrections department must provide psychiatric, psychological and other counseling and treatment for the defendant as necessary. However, a defendant who is found not guilty by reason of serious mental illness is generally free to walk out the door of the criminal justice system. The courts often, but do not always, find the inmate incompetent and appoint a treatment guardian. Some may be civilly committed, but there is no certainty of that. This is particularly troublesome in violent cases.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

AOC analysis states “the definition of “serious mental illness” set forth in this bill conflicts with (or at least, is different than) the extensive definitions of that term in HB 175, HB 242, and SB185.”

TECHNICAL ISSUES

AOC states “like the other specialized assault and battery statutes, the original intent of Section 30-3-9.2 and its heightened penalties for attacks on health care workers was to reduce violence in health care facilities. “The purpose of the battery upon school personnel statute is to decrease incidents of violence at schools by enhancing the penalties for crimes committed against ‘employees’ of the school.” *State v. Johnson*, 2009-NMSC-049, 147 N.M. 177, 218 P.3d 863, rev'g 2008-NMCA-106, 144 N.M. 629, 190 P.3d 350, at {15}. It is ironic that most of the violent incidents at those facilities probably involve patients with serious mental illness, who most likely cannot be deterred by heightened penalties, and under HB 346, will not be guilty of this crime.”

TR/jle