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FISCAL IMPACT REPORT

SPONSOR	SJC	LAST UPDATED	
	Public Peace, Health, Safety & Welfare	ORIGINAL DATE	3/11/2023
SHORT TITLE	Create Crime of Swatting	BILL NUMBER	CS/Senate Bill 513/SJCS
		ANALYST	Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD (state)	\$186.1	\$263.1	\$263.1	\$712.3	Recurring	General Fund
Costs to Counties	(\$115.2 to \$57.6)	(\$115.2 to \$57.6)	(\$115.2 to \$57.6)	(\$345.6 to \$172.8)	Recurring	County General Funds
Total	\$70.9 to \$128.5	\$147.9 to \$205.5	\$147.9 to \$205.5	\$366.7 to \$539.5	Recurring	County and State General Funds

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

Because of the short timeframe between the adoption of this substitute and its hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of SJC Substitute for Senate Bill 513

The Senate Judiciary Committee substitute for Senate Bill 513 increases the penalty for the crime of making a shooting threat from a misdemeanor to a fourth-degree felony and creates the new crime of “swatting,” a fourth-degree felony. A fourth-degree felony carries a basic sentence of 18 months incarceration.

The new crime of swatting consists of knowingly making a false or misleading report of an ongoing emergency or threat of violence to a public safety agency (such as a firefighting agency, law enforcement agency, or emergency medical services agency), agency personnel, or emergency dispatch, with the intent to cause an immediate response from law enforcement and other first responders.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB513 is anticipated to increase the number of incarcerated individuals.

Overall, this analysis estimates SB513 will result in additional incarceration costs of \$263.1 thousand per year. These additional costs will begin to be realized in FY25, with costs of \$186.1 thousand, and increasing over the following year to level out at \$263.1 thousand (as offenders begin to be released from prison) and future fiscal years. Detail of these incarceration cost calculations are provided below.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (both for new cases for the new crime and if more defendants invoke their right to a trial when facing more serious penalties) or to law enforcement to investigate and arrest individuals for the new crime created by SB513, are not included in this analysis, but could be moderate.

This analysis does not include potential benefits of crime deterrence due to increased penalties for the crime of making a shooting threat, as research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

Detail of Incarceration Cost Calculations. Increasing the penalty for making a shooting threat: Increasing the penalty for making a shooting threat from a misdemeanor to a fourth-degree felony increases the amount of time individuals are anticipated to spend incarcerated and shifts those costs from counties to the state, as those individuals would be incarcerated in state prisons rather than county jails. The Administrative Office of the Courts reported 11 individuals were charged with the crime of making a shooting threat between May 18, 2022, and February 6, 2023; five of those cases had been adjudicated, with two resulting in convictions, and six were pending. Assuming a similar conviction rate for the six pending cases (about 40 percent) and similar charges and convictions going forward, this analysis projects six convictions and prison admissions annually for this crime.

Based on the actual time served for individuals released in FY21 whose highest charge was for a fourth-degree felony provided by the Sentencing Commission (NMSC), these six individuals are projected to spend about 1.4 years in prison each due to this new crime, a cost of \$37.6 thousand per offender and \$225.5 thousand overall. These additional costs will begin to be realized in

FY25, increasing over the following year (as more individuals are incarcerated for the crime of making a shooting threat) and leveling out at \$225.5 thousand in FY26 (as offenders begin to be released from prison) and future fiscal years.

Costs to counties for incarceration under this bill are projected to be eliminated because individuals will be incarcerated in state prisons rather than county jails. Based on an estimated six admissions annually, this will reduce costs to counties by \$57.6 thousand to \$115.2 thousand per year.

Creating the new crime of swatting: The proposed new crime of swatting is a fourth-degree felony, which carries an 18-month prison sentence; NMSC estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a fourth-degree felony was about 1.4 years. Based on the marginal cost of each additional inmate in New Mexico's prison system, each offender sentenced to prison for this crime could result in estimated increased costs of \$37.6 thousand to NMCD.

It is difficult to estimate how many individuals will be charged, convicted, or get time in prison or jail based on the creation of a new crime. Without additional information, this analysis assumes at least one person will be admitted to prison each year for this crime, a cost of \$37.6 thousand. Because the estimated time served is greater than one year, the costs of one year (\$26.6 thousand) would be incurred in the first year of incarceration, while the cost of the remaining 151 days (\$11 thousand) would be incurred in the second year of incarceration. To account for time to adjudication, no costs are anticipated to be incurred until one year after the bill takes effect, in FY25. Because the estimated time served is greater than one year, costs are anticipated to increase in FY26, as an offender admitted in FY25 serves the remainder of their term and another offender is admitted but will level out that same year (as offenders begin to be released from prison) and remain level in future fiscal years.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful to community safety. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team has found in the 2nd Judicial District (Bernalillo County) that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and when felonies rose in 2020, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.