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FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/09
 LAST UPDATED 03/18/09 **HB** _____

SPONSOR Adair

SHORT TITLE Criminal Damage to Household Property **SB** 4/aSJC/aHJC

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Fiscal Section		Indeterminate but estimated as minimal	Recurring	General

(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)
 New Mexico Sentencing Commission (NMSC)
 Children, Youth & Families Department (CYFD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of House Judiciary Committee Amendment of Senate Bill 4 /a SJC

The amendment makes the following changes.

1. On page 2, line 15, strike “personal” and insert in lieu thereof “separate”.
2. On Page 2, line 15, after “owned” insert “personal”.
3. On page 2, line 16, after “intimidate” strike the comma and insert in lieu thereof “or”.
4. On page 2, lines 16 and 17, strike “or harass”.

The changes clarify new material language in Section 2 (C).

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment corrects the citations to statutes in the bill.

Synopsis of Original Bill

Senate Bill 4 creates a new criminal offense of damage to and deprivation of the property of a household member, adding a new section in the Crimes Against Household Members Act at Sections 30-3-10 through 30-3-17, NMSA 1978.

A "household member" is defined as a spouse, former spouse or family member, including a relative, parent, present or former step-parent, present or former in-law, a co-parent of a child or a person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for the purposes of the Crimes Against Household Members Act in Sec. 30-3-11 (A).

The bill provides definitions as follows:

- Criminal damage to the property of a household member – intentionally damaging real, personal, community or jointly owned property of a household member with the intent to intimidate, threaten or harass that household member.
- Deprivation of the property of a household member – intentionally depriving a household member of the use of personal, community or jointly owned property of the household member with the intent to intimidate, threaten or harass that household member.

Penalties:

- If damage is \$1,000 or less, misdemeanor.
- If damage is more than \$1,000, fourth degree felony.

FISCAL IMPLICATIONS

The New Mexico Corrections Department offers the following related to additional jail and prison costs.

The additional felony convictions (and where offenders are convicted of two or more misdemeanors at the same time and sentenced to more than 364 days in prison) resulting from this bill would increase the Department's costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new felony or misdemeanor convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty, especially in the area of domestic violence. There is no appropriation in the bill to the Department to cover any of the Department's increased costs associated with the creation of these new crimes.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

There may be some minimal increases in the Department's revenue (caused by a minimal amount of revenue generated by the probation/parolee supervision fees paid by offenders convicted of the new felony crime during their probation/parole period).

CYFD adds.

Offenders often deprive domestic violence survivors of access to property or damage property as a means of maintaining control over their partners. A 2007 study by the Family Violence Prevention Fund found that 44 percent of female domestic violence victims were left without transportation when the abuser disabled their car or hid their car keys (*"The Facts on the Workplace and Domestic Violence Against Women"*). Currently offenders cannot be charged with criminal damage to property if the property is community or jointly owned property.

This act will close this gap in protection for victims by making it a criminal act to destroy or deprive access to property even in cases where the parties are unmarried and do not jointly own property.

The AODA offers the following.

Although this bill was likely intended to hold accountable one spouse for damage to community property, it is actually written to include any household member and hence duplicates existing Criminal Damage to Property law, which already can be used to prosecute non-spouse household members (and others) who damage property. The key need is to protect one spouse against another spouse's determination to cause as much harm to the other spouse as possible, which in domestic violence cases often takes the form of tremendous damage to community property, leaving no remedy unless the couple ends up in divorce court. The bill does add another provision of interfering with property, which could be useful.

TECHNICAL ISSUES

The New Mexico Sentencing Commission brings up technical issues.

It is unclear how the \$1,000 provision would apply to community and jointly owned property. Would the limitation be based upon the total value of the property, or the value of the property interest of the victim?

It is unclear if personal property includes animals. It appears so, but the language is somewhat ambiguous. "Damaging" and "depriving... the use" of property appear more appropriate in describing inanimate objects than to animals.

MW/svb/mc