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FISCAL IMPACT REPORT

SPONSOR HJC DATE TYPED 2/9/04 HB 164/HJCS

SHORT TITLE Prohibit Damage to Community Property SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for House Bill 164 amends the Criminal Damage to Property statute Section 30-15-1 NMSA 1978 to prohibit criminal damage to property of a household member.

Household member is defined as a spouse, former spouse or family member, including a relative, parent, present or former stepparent, present or former in-law, co-parent of a child or person with whom a person has had a continuing personal relationship. Cohabitation is not necessary to be deemed a house hold member for the purposes of this bill.

Significant Issues

This bill will criminalize damage to property regardless of whether a perpetrator jointly owns the property with another. This bill would alter the effect of the Court of Appeals' holding in State v. Powels, 2003-NMCA-090, 134 N.M. 118, 73 P.3d 256 in which the Court affirmed the dismissal of a criminal indictment against a defendant for criminal damage to property because the property damaged was the community property of both the defendant and the victim.

The AGO states this bill appears to apply in the situation where two persons married to each other are going through a divorce or are otherwise engaging in a domestic dispute, and one of the spouses intentionally damages a piece of property that is owned by both spouses (under the community property laws of New Mexico), but is being maintained or used by the other spouse. Under the current law, and without the language included in this bill, a disgruntled spouse who

intentionally damaged community property being maintained or used by the other spouse would probably not be guilty of the crime of criminal damage to property.

This bill will allow a criminal damage to property charge to be brought against a household member who destroys property owned by both parties. There could be an increase in *pro se* petty misdemeanor criminal damage cases (damage under \$1,000) in magistrate and metropolitan court. A district attorney is not required to file misdemeanor or petty misdemeanor charges in those courts.

FISCAL IMPLICATIONS

The AOC forecasts 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.

CD estimates this bill might cause a slight increase in the number of persons convicted of the crime of criminal damage to property, and thus may cause a slight increase in the number of offenders incarcerated in or placed on probation with the CD. It is estimated that most people convicted of this sort of criminal damage to property would be given probation rather than sentenced to prison. CD believes that they can absorb any increased costs to them.

ADMINISTRATIVE IMPLICATIONS

The AOC forecasts a minimal added administrative cost as a result of the provisions of this bill.

The CD states that the bill could result in a minor increase in the administrative burden upon CD personnel who may be required to manage a larger prison system or larger probation or parole caseloads.

DW/sb:YR