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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/08  
 LAST UPDATED 02/09/08      HB 375/HJCS

SPONSOR HJC

SHORT TITLE Intimidation of Criminal Justice Officials      SB \_\_\_\_\_

ANALYST Escudero

### APPROPRIATION (dollars in thousands)

| Appropriation |      | Recurring<br>or Non-Rec | Fund<br>Affected |
|---------------|------|-------------------------|------------------|
| FY08          | FY09 |                         |                  |
|               | NFI  |                         |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**DUPLICATES: HB1192**

#### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Attorney General Office (AGO)

#### No Response Received From

Administrative Office of District Attorney (AODA)

#### SUMMARY

##### Synopsis of Bill

Prosecution pursuant to this section shall not prevent prosecution pursuant to any other provision of law when the conduct also constitutes a violation of that other provision.

#### SIGNIFICANT IMPLICATION

This HJC substitution further clarifies that this does not replace any criminal prosecution proceedings under state law.

House Bill 375 seeks to criminalize intimidation by threat, or bodily injury or retaliation against criminal justice officials.

- According to PDD, the bill would create a new statute criminalizing intimidation of or retaliation against a criminal justice official.
- Intimidation is defined as intimidating or threatening a criminal justice official or a staff or family member of a criminal justice official who is or may become involved in a judicial, administrative, legislative or other official cause or proceeding for the purpose of preventing or influencing a judicial ruling, prosecution, investigation, testimony, report or sentence.”
- Retaliation is defined as causing or threatening to cause bodily injury to or damage to the property of a criminal justice official or staff or family member.
- Intimidation would be punished as a third degree felony.
- Retaliation would be punished as a second degree felony.
- A "criminal justice official" is defined as a judge, a special commissioner, a hearing officer, a district attorney, a deputy district attorney, an assistant district attorney, a senior trial prosecutor, a chief public defender, a district public defender, an assistant public defender, the attorney general, a deputy attorney general, an assistant attorney general, a law enforcement officer or a probation and parole officer or an attorney if the intimidation or retaliation arose out of that attorney's representation of a defendant in a criminal action.

As stated by AOC, for judges, special commissioners, hearing officers, district attorneys and staff prosecutors, public defenders and staff public defenders, attorneys general and staff lawyers, law enforcement, probation and parole officers and immediate family members, House Bill 375 creates two separate felony level offenses whenever a protected parties under the statute is intimidated or threatened for the purpose of influencing the outcome of a case decision, prosecution, investigation, testimony, report or sentence in a legal proceeding.

- The bill creates the crime of retaliation against the named protected officials when there is a physical injury or threatened physical injury resulting from a case decision, prosecution of a crime, investigation, testimony, report or sentence in a legal proceeding.
- A person convicted of intimidation of a protected person under this statute is guilty of a third degree felony. A person convicted of retaliation against a protected person under this statute is guilty of a second degree felony.

*This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Opinion letter. This is a staff analysis in response to the agency's, committee's or legislator's request.*

As stated by the AGO, although the bill uses the term “criminal justice official” in its title and text, its definition of those persons includes hearing officers and special commissioners who may be involved in civil or administrative proceedings. The bill is not limited to criminal causes. It includes intimidation of certain officials who are or who may become “involved” in judicial, administrative, legislative or other official causes or proceedings. Presumably the bill could extend to conduct against hearing officers in administrative rulemaking proceedings or against legislators chairing legislative hearings, etc. In spite of its title, the bill is not limited to conduct against officials involved in criminal proceedings.

Presumably the bill is not intended to prohibit attempts by counsel to “intimidate” law enforcement officers in order to influence their testimony during judicial or other official proceedings, or to prohibit fair argument or comment during those proceedings.

Current state law governs some of the conduct addressed by this bill.

- For example, NMSA Section 30-24-3 prohibits intimidating or retaliating against any witness in any judicial, administrative, legislative, or other official cause or proceeding. NMSA Section 30-22-1(D) currently imposes misdemeanor criminal penalties for *abusing* any judge, magistrate or peace officer in the lawful discharge of his duties.
- NMSA Section 30-22-3 prohibits disguising or concealing identity in an attempt to *intimidate* any public officer or any other person in a legal performance of his duty or the exercise of his rights under the laws of the United States or of this state.
- NMSA Section 30-22-21(A)(2) prohibits any unlawful act, *threat* or menacing conduct which causes a peace officer while he is in the lawful discharge of his duties to reasonably believe that he is in danger of receiving an immediate battery.

### **FISCAL IMPLICATIONS**

As stated by AOC, if cases are prosecuted under this new crime, the district attorneys, public defenders and courts will see a minimal increase in caseload.

As stated by NMCD, the bill creates two new felony crimes. While the number of new convictions for the new crimes is likely to be minimal to moderate, there is no appropriation in the bill to cover the increased costs to the Department. The bill is likely to result in a minimal to moderate increase in the Department’s prison population and probation/parole caseloads.

- The contract/private prison annual cost of incarcerating an inmate is \$25,455 per year for males. The cost per client to house a female inmate at a privately operated facility is \$25,805 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 \$1,019 per year. The cost per client in Intensive Supervision programs is \$5,151 per year. The cost per client in Community Corrections is \$4,589 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,593.

### **SIGNIFICANT IMPLICATION**

As stated by PDD, House Bill 375 has support statewide from officials working in the legal system.

Per the Analyst of this bill, PDD, NMCD, and AOC all support this bill.

### **PERFORMANCE IMPLICATIONS**

According to AOC, the courts are participating in performance-based budgeting. It is unknown if enactment of this bill would impact performance measures as they relate to judicial budgeting.

The courts are participating in performance based budgeting. This bill may impact the courts' performance based budgeting measures, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

This bill will likely have an impact on the Judiciary's performance measures without the additional personnel required to comply with the bill.

#### **OTHER SUBSTANTIVE ISSUES**

As stated by NMCD, the bill protects probation and parole officers as criminal justice officials, but does not protect or include NMCD correctional officers. These correctional officers also testify and perform other services on behalf of the criminal justice system. They are also subject to threats of intimidation or retaliation made by NMCD inmates, and the protection provided by this proposed law would also be helpful to them.

PME/mt