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FISCAL IMPACT REPORT

SPONSOR Senate Judiciary **ORIGINAL DATE** 02/09/11
 Comm. **LAST UPDATED** _____ **HB** _____

SHORT TITLE Prohibit Intimidation of Judges & Retaliation **SB** 10/SJCS

_____ **ANALYST** Daly/Graeser

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|-------|-------|--------|----------------------|-------------------------|------------------|
| Total | \$0.0 | \$0.0 | \$19.0 | \$19.0 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 26

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Association of District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Original Bill

Senate Judiciary Substitute for Senate Bill 10 creates a new section of the criminal code criminalizing:

- 1) Intentionally threatening bodily injury to or damage to the property of a judge, or staff or family member of a judge, with the intent of influencing the legal process or the outcome of the case – “a judge’s exercise of the judge’s judicial duties”; and
- 2) Retaliating against a judge or staff or family member of a judge after a ruling or judicial action by intentionally threatening bodily injury or damage to the property of a judge or staff or family member.

Both intimidating and retaliating against a judge under SB 10 are fourth degree felonies.

FISCAL IMPLICATIONS

Because the conduct which is the subject of this bill is already criminalized under other statutes (with a lesser sentence upon conviction), no significant impact in prosecution, defense or judicial costs is foreseen. The numbers in the table above represents NMCD's average cost for incarceration of an offender upon conviction (assuming no mitigating or aggravating circumstances, no suspension or deferment, and no meritorious deduction) for the additional six months of incarceration imposed should this bill become law.

SIGNIFICANT ISSUES

Senator Wirth and Representative Rehm's original SB10 required an "overt act" as a part of "threatening". The Committee substitute changes the standard for "intimidation" to be "intentionally threatening ... a judge or family member with intent to influence the judge's exercise of the judge's judicial duties."

The original bill required an action – either causing bodily injury or damage to property – as the standard for "retaliation." The standard in the committee substitute for retaliation is "intentionally threatening bodily injury to or damage to the property of a judge or family member with the intent to retaliate against the judge for the judge's exercise of the judge's judicial duties."

AOC reports that New Mexico has experienced an increase in threats against judges in recent years. This past year, two judges in Santa Fe received death threats. In 2008, an Albuquerque judge was threatened by a party in a divorce case; the perpetrator was ultimately prosecuted under federal law. Around the nation, judges have been threatened and assaulted. A man with home addresses for a judge and a justice was caught with weapons, ammunition, a passport and cash after he threatened both the judge and the justice. A judge was attacked in a parking lot as she walked to her car. Security officers shot and killed a man involved in a domestic dispute that smuggled a knife into the courthouse and threatened to use it. In several cases, bomb and other threats to judges have required the closing of courts or courtrooms. AOC believes a felony consequence for these threats and disruption of judicial business is more appropriate than the existing misdemeanor penalty.

PERFORMANCE IMPLICATIONS

AOC reports the courts are participating in performance based budgeting. This bill may have an impact on the measures of the district courts in the following areas: cases disposed of as a percentage of cases filed; and percentage change in case filings by type.

ADMINISTRATIVE IMPLICATIONS

AOC reports there may be an administrative impact on the courts as a result of any increase in caseload and or in the amount of time necessary to dispose of these cases.

CONFLICT

Senate Bill 10 makes both intimidation of a judge and retaliation against a judge a fourth-degree felony, while House Bill 26 makes intimidation of a judge a third degree felony, and retaliation a

second degree felony. SB 10 includes intimidation against staff and family members of judges, while HB 26 does not.

TECHNICAL ISSUES

AODA suggests addition of definition of “judge’s staff” to clarify whether all court personnel are covered, or just those who work directly for the particular judge.

Clarification in the definition of “hearing officer” to either include or exclude administrative hearing officers may avoid later confusion and litigation as to that issue.

OTHER SUBSTANTIVE ISSUES

NMCD suggests that Department probation and parole officers, correctional officers, and other department staff (wardens, classification officers and others) who testify in certain court hearings are also subject to threats of intimidation or retaliation made by inmates and their relatives, and protection like that provided in this bill would also benefit them in the performance of their duties.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

DPS suggests that although current law may be applicable, depending on the specific circumstances, this bill would add clarity to the Criminal Code as to the behaviors covered here, and provide another tool to law enforcement and prosecutors.

POSSIBLE QUESTIONS

Should defendant’s knowledge that the individual was a judge or a member of the judge’s staff or family be a stated element of the crime?

MD/LG/bym