

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/19

SPONSOR Roybal/Caballero LAST UPDATED _____ HB 122

SHORT TITLE Include Homeless in Hate Crimes SB _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate	Indeterminate		Recurring	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)

New Mexico Attorney General (NMAG)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

House Bill 122 amends the Hate Crimes Act to add homelessness and economically disadvantaged status to the list of actual or perceived characteristics that are the basis for an intention to commit a crime "motivated by hate." HB 122 adds definitions of "homelessness" and "economically disadvantaged status." The bill makes a technical, nonsubstantive change to the title of Section 31-18B-3 NMSA 1978.

The effective date of HB 122 is July 1, 2019.

FISCAL IMPLICATIONS

According to LOPD, difficulties in proof related to the intent of a hate crime perpetrator, when coupled with the increase in criminal penalty under the Hate Crimes Act, make it more likely that cases prosecuted under the Act will result in trials as opposed to resolutions by plea agreement. LOPD acknowledges that this possibility already exists as to other groups protected by the statute, but states that an increase in the number of categories will likely increase the number of prosecutions. An increase in trials of this nature would increase LOPD's need for

attorneys and other resources to represent the accused in these cases.

LOPD notes that, barring some other way to reduce LOPD's indigent defense workload, any increase in the number of prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. If more of these higher-penalty trials result, LOPD and the DAs will need to hire more trial attorneys with greater experience, and will also require more investigators, experts and court resources.

AOC states that any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and number of prosecutions resulting from the bill's amendments to the Hate Crimes Act. 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.

SIGNIFICANT ISSUES

LOPD states that proof of a criminal perpetrator's intent and whether it was based on hate of a protected group presents evidentiary issues because such evidence tends to be nebulous or ambiguous. Usually, evidence must be inferred from the perpetrator's other statements or actions as, oftentimes, there is no direct proof that a person committed a crime based on hate of a group. Under these circumstances, according to LOPD, proof of motivation will likely be difficult for the state to produce. With race or gender discrimination, for instance, there are known slang terms—racial or gender slurs—that might sometimes provide direct evidence of motivation. There are fewer such common slurs with respect to the homeless or economically disadvantaged. Also, it will often prove difficult to distinguish whether crimes that might have been committed with such motivation were, in fact, merely crimes of opportunity.

AOC states that according the National Coalition for the Homeless, there were 83 anti-homeless attacks in 2016, in which 37 victims lost their lives, and in 2017, there were 29 anti-homeless attacks, in which 11 victims lost their lives. See *Vulnerable to Hate: A Survey of Bias-Motivated Violence against People Experiencing Homelessness in 2016-2017*, www.nationalhomeless.org. AOC notes that the FBI does not currently recognize a protected status for people experiencing homelessness, yet violence towards these individuals continues to increase.

AOC also points to a survey by Heading Home, a nonprofit organization that has housed 328 chronically homeless people in Albuquerque since 2011, which found that three in five of the 1,300 respondents had been assaulted at some point while living on the streets. Most never notified the police for fear of retaliation.

Like LOPD, AOC notes that attorneys may face extra complexity in evaluation of crimes against economically disadvantaged status/homeless people to determine if the crime was motivated by the victim's economic disadvantaged status/homelessness and whether or not it should be prosecuted as a hate crime. This would require additional proof elements, as well as a separate filing of fact for the motivation of the crime.

NMAG quotes from a New Mexico Supreme Court decision holding that “[g]enerally, when social and economic legislation is challenged on equal protection grounds, the legislation is considered presumptively valid and is subjected to the rational basis test.” *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 14, 125 N.M. 721. Therefore, according to NMAG, as long as

there is a rational basis to treat crimes committed against homeless persons and economically disadvantaged persons differently, the law should survive constitutional scrutiny. Moreover, the Hate Crimes Act requires a finding beyond a reasonable doubt that the crime was motivated by hate, which is consistent with the constitutional requirement that a crime's basic sentence cannot be increased by a fact that is not proven beyond a reasonable doubt.

BG/gb/sb