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FISCAL IMPACT REPORT

SPONSOR HJC ORIGINAL DATE 01/25/21
 LAST UPDATED 02/23/21 HB 27/HJCS

SHORT TITLE Create Crime of Hazing SB _____

ANALYST Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
LOPD Operating Budget		Minimal	Minimal	Minimal	Recurring	General Fund
Total		Minimal	Minimal	Minimal		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Higher Education Department (NMHED)
 Law Offices of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)

No Response Received

Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 27 creates the crime of both hazing, a petty misdemeanor, and “aggravated hazing,” a misdemeanor punishable by up to 364 days in jail and/or a \$1,000 fine pursuant to Section 31-19-1 NMSA 1978.

The bill defines “hazing” as consisting of an “act, intentionally or recklessly committed against a student or a prospective student of a public or private post-secondary educational institution” that either causes or puts an individual at risk of serious mental or physical injury in connection with initiation to or maintaining membership in a student body or private athletic club, regardless of

whether or not the club is officially recognized or sanctioned by the educational institution.

Aggravated hazing, a full misdemeanor, is defined as an act intentionally or recklessly committed against a student or prospective student that results in “painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body of the student or prospective student or causes mental injury to the student or prospective student.”

The bill clarifies that hazing does not include “coaching, training, conditioning, physical education, customary athletic events or school-sanctioned events” nor does it include activities that further “legitimate curricular or military training program goals” so long as those activities are customary throughout other similar institutions and approved by the educational institution.

Finally, the House Judiciary Committee substitute for House Bill 27 establishes that claiming an individual willingly underwent hazing is not permissible as a defense against the new misdemeanor charge.

The effective date of the bill is July 1, 2021.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC), Law Office of the Public Defender (LOPD), Higher Education Department (HED), and office of Attorney General (NMAG) all acknowledged in agency response that the creation of any new crime will likely create new prosecutions, and therefore additional caseloads for judges, defense council, and prosecuting attorneys.

While AOC, NMHED, and NMAG determined these costs would be “minimal, “and administrative in nature, LOPD speculated that the impact could be potentially significant, stating:

News reports of hazing incidents nationwide suggest at least the possibility that many charges will result. Moreover, hazing implicates the type of group activity that would likely lead to multiple individuals being charged from a single incident. With multiple co-defendants comes the need for conflict counsel. Thus, hazing, when charged, is likely to result in expenditures for contract attorneys outside of LOPD’s ordinary workforce to ensure that each codefendant receives conflict free representation.

Currently, LOPD uses contract attorneys for about 33 percent of cases, often in rural areas of the state where there is no Public Defender Department Office. For FY21, the contractual services category of the LOPD operating budget was \$6.12 million, about 11 percent of the agency total operating budget. LFC analysis projects minimal fiscal impact, as additional contracts required by the passage of HB27 could likely be absorbed by the agency’s current operating budget.

SIGNIFICANT ISSUES

Though most schools, colleges and universities have anti-hazing policies, New Mexico is one of six states in the country that does not have any formal criminalization of hazing. According to NMHED, “laws in the other 44 states range from misdemeanors to felonies depending on the

seriousness of the offense.”

TECHNICAL ISSUES

The bill does not provide a definition for “mental injury” which may cause inconsistent prosecution.

ADP/al/rl