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FISCAL IMPACT REPORT

SPONSOR <u>Brandt</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/7/24</u>
SHORT TITLE <u>Penalty for Shooting Threat</u>	BILL NUMBER <u>Senate Bill 66</u>
	ANALYST <u>Sanchez</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to state (NMCD)	No fiscal impact	At least \$26.6	Up to \$37.5	Up to \$64.1	Recurring	General Fund
Costs to counties	No fiscal impact	At least \$9.6	Up to \$19.2	Up to \$28.8	Recurring	See Fiscal Implications
Total	No fiscal impact	At least \$36.2	Up to \$56.7	Up to \$92.9	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

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

Agency Analysis was Solicited but Not Received From

Administrative Office of the District Attorneys (AODA)
 Municipal League (ML)

SUMMARY

Synopsis of Senate Bill 66

Senate Bill 66 (SB66) makes several amendments to Section 30-20-16, NMSA 1978, focusing primarily on the criminalization of swatting and the enhancement of penalties for shooting threats.

Creation and Definition of Swatting as a Crime: SB66 specifically defines and criminalizes swatting. Swatting is defined as knowingly making a false or misleading report of an ongoing emergency or threat of violence to a public safety agency, agency personnel, or to a public safety answering point, with the intent to cause an immediate response from law enforcement and other first responders. This act is classified as a

fourth-degree felony under the bill.

Enhancement of Penalties for Making Shooting Threats: SB66 increases the penalty for making a shooting threat to a fourth-degree felony. This amendment aligns the penalties for making shooting threats with those for making bomb threats.

Economic Harm and Restitution: SB66 amends the definition of economic harm to include swatting alongside existing offenses like bomb scares and shooting threats. It mandates that individuals convicted of swatting must reimburse the victims for any economic harm caused by their offense. This could include compensation for wages lost and overhead costs incurred due to shutting down operations as a response to the false report.

New Definitions: The bill introduces new definitions regarding the enforcement of the new provisions. It defines a "public safety agency" as a public body providing essential emergency services, such as firefighting, law enforcement, and medical services. Additionally, it defines a "public safety answering point" as a 24-hour local jurisdiction communications facility that receives 911 calls, further clarifying the infrastructure targeted by false reporting.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. LFC estimates a marginal cost (the cost per additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB66 is anticipated to increase the number of incarcerated individuals.

Based on the marginal cost of each additional inmate in New Mexico's jail system, each offender sentenced to jail for this crime could increase costs by approximately \$9,600 to \$19.2 thousand to counties. The enhanced punishment proposed in this bill for a fourth-degree felony is punishable by up to 18 months in prison. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities.

As more people are admitted to prison, costs increase. Costs continue to rise for each year until offenders admitted in the first year the change takes effect begin to leave prison. For purposes of this calculator, costs ramp up over the term of the average change in time served (for a new crime, the entirety of the average projected time served), with the first year of admissions expected to exit prison after the average change in time served.

It is difficult to estimate how many individuals will be charged, convicted, or sent to jail based

on an increase of sentencing penalties. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY26; however, a minimal cost may apply in FY25 for individuals detained for some period before adjudication. This analysis estimates Senate Bill 66 will increase annual incarceration costs of at least \$37.5 thousand to the state and at least \$19.2 thousand to counties. Costs to the state are estimated to be at least \$26.6 thousand in FY26 and will rise to \$37.5 thousand in FY27 and future fiscal years.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB66, are not included in this analysis but could be moderate.

Agency analyses indicate that beyond the potential rise in incarceration costs following Senate Bill 66's enactment, the bill will lead to higher administrative and operational expenses for both the judiciary and public defender's office. This will require more resources to handle increased caseloads and the complexity of trials.

According to the analysis provided by the Administrative Office of the Courts, implementing Senate Bill 66 will result in minimal administrative costs for the update, distribution, and documentation of statutory changes across the state. However, the fiscal impact on the judiciary could increase proportionally with the enforcement of the law, leading to commenced prosecutions and appeals from convictions. This potential increase in caseloads due to new laws and amendments would necessitate additional resources, including more judge and court staff time, as well as increased courtroom availability, thereby extending the time needed to dispose of cases.

According to the analysis provided by the Law Office of the Public Defender, the enactment of Senate Bill 66 would necessitate hiring more experienced trial attorneys due to the bill's reclassification of one crime from a misdemeanor to a felony and the addition of a new felony crime, potentially leading to higher-penalty trials. This would result in increased costs, with mid-level felony capable attorneys requiring a midpoint salary, including benefits of \$136.3 thousand and \$12.8 thousand in recurring operational costs. Additionally, the bill's increased penalties, especially for making shooting threats, could disproportionately affect juvenile offenders, leading to an increase in prosecutions and significantly elevating the overall workload for the public defender's office. This is primarily because the statute targets insincere threats made by individuals, including minors, who may not fully understand the gravity of their actions, thereby increasing the likelihood of trials defending against felony charges based solely on verbal statements.

SIGNIFICANT ISSUES

The analyses provided by responding agencies expresses concerns over the potential impact of Senate Bill 66 on juveniles, the potential for broad application and misinterpretation, overlap with federal initiatives, and the collateral consequences of felony charges.

The analysis from the Administrative Office of the Courts expresses concerns regarding the classification of swatting and shooting threats as fourth-degree felonies under SB66 could have a disproportionate effect on juveniles. Such classification subjects juveniles to felony charges,

possibly resulting in major legal and social consequences for actions intended as pranks or performed without fully grasping their implications.

The Law Office of the Public Defender highlights the issue that the elements of making a shooting threat do not require actual fear, harm, or even the intent to do harm beyond causing a disruption or eliciting a law enforcement response. This broad definition could criminalize what is described as "thought crimes" or "idle threats," with particular implications for statements made by children or juveniles without a full appreciation of the consequences. Similarly, the definition of swatting could be misinterpreted, as noted by the Office of the Attorney General, suggesting the language of the bill might be construed to mean the threat is directed towards the public safety agency rather than reporting an emergency or threat to the agency.

The New Mexico Sentencing Commission points out, while some federal laws cover swatting activity, there is no specific federal law directly criminalizing it, though a bill was recently introduced in Congress for that purpose. This raises questions about the necessity and effectiveness of state-level legislation in areas where federal law might already provide sufficient coverage or where federal action is anticipated.

The Law Office of the Public Defender also raises concerns about the collateral consequences of becoming a felon, such as losing the right to vote. The creation of new felonies for behaviors that might not result in serious harm is cautioned against, emphasizing the need for legislation to be narrowly tailored to target specific harmful behaviors without overly broad applications.

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