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FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 2/21/03 HB 450

SHORT TITLE: Assault Upon a Judicial Officer SB _____

ANALYST: Chavez

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	NFI		See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Public Defender (PD)
 Bernalillo County Metropolitan Court (BCMC)
 Administrative Office of the District Attorney (AODA)
 New Mexico Corrections Department (NMCD)
 Administrative Office of the Courts (AOC)
 LFC Files

SUMMARY

Synopsis of Bill

This bill enacts a new section of the Criminal Code that will provide a penalty of a fourth degree felony when convicted of assaulting a judicial officer.

Assault upon a judicial officer consists of (1) an attempt to commit a battery upon the person of a judicial officer while he is in the lawful discharge of his duties; or (2) any unlawful act, threat or menacing conduct that causes a judicial officer, while in the lawful discharge of his duties, to reasonably believe that he is in danger of receiving an immediate battery.

Judicial officer is defined as a supreme court justice, judge of the court of appeals, a district court judge, a magistrate judge, a metropolitan court judge or a municipal court judge.

Significant Issues

Currently, assault and battery are classified as a petty misdemeanors.

There is no proposal for a similar raise in penalty for battery on a judicial officer. Battery involves actual touching (completed act) while assault is the mere apprehension. It appears that the penalty would need to be raised for the completed act since the penalty for mere apprehension is raised.

FISCAL IMPLICATIONS

No appropriation is contained in this bill. However, it will have some impact on the courts in terms of caseload and will impact the prosecutors who have to prosecute these new cases. In addition, it will impact the Corrections Department by providing some prison commitments each year. These implications may lead to an additional need for FTE or additional costs to the Corrections Department.

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes.

ADMINISTRATIVE IMPLICATIONS

The bill will have some administrative implications in terms of enforcement, prosecution and confinement.

OTHER SUBSTANTIVE ISSUES

The Public Defenders are concerned that the proposed legislation unnecessarily empowers judicial officers to charge a person (defendant, witness, attorney, spectator or law enforcement officer) with a felony if the alleged conduct “Causes a judicial officer...to reasonably believe that he is in danger of receiving an immediate battery.” It is a concern of the department that a felony sanction for perceived misconduct or perceived attempts at battery may lead to an unconstitutional chilling effect on the “effective assistance of counsel” and the “fair trial” principles of our system

POSSIBLE QUESTIONS

1. Should hearing officers and special masters be included in the definition of “judicial officer”?
2. Should other court participants such as bailiffs attorney’s etc. be included in the definition of “judicial officer”?
3. Are assaults on judicial officers of such frequency and/or future concern that they should have a felony penalty?
4. Should there be a companion expansion for battery on a judicial officer with a similar penalty?