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FISCAL IMPACT REPORT

SPONSOR Crowder ORIGINAL DATE 1/29/19
LAST UPDATED _____ HB 115
SHORT TITLE Create Crime Of Making Terroristic Threat 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	Indeterminate			See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Law Officers of the Public Defender (LOPD)

Department of Public Safety (DPS)

Homeland Security and Emergency Management Department (Homeland Security)

Responses Not Received From

Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 115 adds a new section to the Criminal Code making it unlawful for a person to make a terroristic threat, as defined in the bill. A person who commits making a terroristic threat is guilty of a fourth degree felony.

FISCAL IMPLICATIONS

AODA states that because HB 115 creates a new crime, it may increase litigation, resulting in increased costs to the district attorneys.

LOPD states that creation of any new crime is likely to create new prosecutions and, therefore,

additional clients for LOPD. Because school shootings have become commonplace in our society, unfortunately, LOPD anticipates that HB 115, if enacted, would likely be used to prosecute “copy-cat” threats (without follow-up action) after such an incident, even when such threats cause no actual harm. The increase in prosecutions would increase LOPD’s overall workload, especially because HB 115 seeks to punish terroristic threats at a felony level.

LOPD notes that, barring some other way to reduce its indigent defense workload, any increase in the number of prosecutions would bring a concomitant need for an increase in indigent defense funding. LOPD and the DAs will need to hire more trial attorneys with greater experience, and, again, this will also require more investigators, experts and court resources.

SIGNIFICANT ISSUES

AODA notes that courts have recognized that some dangerous forms of speech should be prohibited. Other states have enacted statutes addressing terrorist threats, and federal law prohibits certain threats. See 18 U.S.C. § 2332b(c)(1)(g). Threats made in New Mexico using a telephone, telegraph or instrument of commerce may be prosecuted under federal law. See 18 U.S.C. § 844(e).

According to AODA, although New Mexico currently does not have a general statute addressing terrorist threats, the state has a number of criminal statutes that can be used to address threats. For example, the general assault statute prohibits any threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery. (In assault cases, the focus is on the victim: did the victim believe he was in danger of receiving an immediate battery.) New Mexico also has multiple assault statutes addressing assault to specific victims (family members, peace officers, sports officials, health care personnel, and school personnel). New Mexico also has some very specific statutes addressing threats. For example, Section 30-20-12 NMSA 1978 prohibits use of a telephone to make threats. Section 30-20-16 NMSA 1978 addresses bomb scares.

AODA notes that HB 115 describes the nature of the prohibited threat (it must be a threat to commit an offense involving violence to a person or to property, it must be unequivocal, unconditional and specific so as to convey a gravity of purpose and the immediate prospect of execution). But, in contrast to current state laws used to address threats, HB 115 is not limited to specific types of threats (bomb scares, for example) or specific means of conveying the threat (use of a telephone, for example). HB 115 also does not focus on the reaction of the intended victim (the victim does not have to believe he is in danger). Instead, the focus is on the intent of the person making the threat.

AODA states that HB 115 would cover some threats that are not easily prosecutable under existing statutes. But AODA states the bill might also cover threats that could be prosecuted under multiple statutes. For example, a telephoned bomb scare might be prosecuted under the bomb scare statute, the use of a telephone statute or the assault statute, as well as under HB 115. According to AODA, a prosecutor would need to determine which statute applied (with a more specific statute usually applying). Prosecuting conduct under multiple statutes will have to be evaluated for double jeopardy concerns.

AODA believes that HB 115 raises a number of interpretation issues. While HB 115’s apparent focus is on threats that impact the public or government entities, the bill also covers a threat that

places a person in fear of great bodily harm. So a threat to punch someone or slash their tires could be a terroristic threat under HB 115.

Regarding HB 115's requirement that a covered threat must convey "the immediate prospect of execution," AODA observes that a defendant's threat to "someday" return to shoot up an office, school, or church will probably not be actionable under HB 115.

Like AODA, LOPD observes that because HB 115 is structured disjunctively, any of the bill's five enumerated purposes of making a threat could constitute a fourth degree felony, including an unequivocal, unconditional and specific threat with the intent to "place a person in fear of great bodily harm." According to LOPD, the same behavior could be said to constitute simple assault under Section 30-3-1 of the Criminal Code, which is punishable as a petty misdemeanor. LOPD states that this raises a problem of general-specific statutory construction and would likely lead to the need for judicial clarification of when one or the other statute applies.

BG/al