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FISCAL IMPACT REPORT

ORIGINAL DATE

SPONSOR SJC LAST UPDATED 3/11/19 **HB** _____

CS/CS/146

SHORT TITLE Create Crime of School Threat **SB** SPACS/SJCS

ANALYST Hawker

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY19 | FY20 | FY21 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------------------------|------|------|----------------------|------------------------------|------------------|
| Total | Indeterminate but minimal | | | | Nonrecurring | General Fund |

Parenthesis () indicate expenditure decreases

SOURCES OF INFORMATION

LFC Files

Responses to SJC Committee Substitute Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)
 University of New Mexico (UNM)

Responses to Original Bill Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 New Mexico Attorney General (NMAG)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute for the Senate Public Affairs Committee Substitute for Senate Bill 146 adds a section to the Criminal Code, making it unlawful for a person to make a threat of a school shooting. Whoever makes a threat of a school shooting is guilty of a fourth degree felony.

“Threat of a school shooting” means communicating one’s intention to bring a firearm to school and to use the firearm with intent to:

- place a person or a group in fear of great bodily harm;
- prevent or interrupt the occupation or use of a school building; or

- cause a response to the threat by an official or volunteer agency organized to deal with emergencies.

“School” means the buildings and grounds, including playgrounds, playing fields, parking areas and school buses of any elementary school, secondary school, junior high school, high school, college or university. Additionally, “school” means any other buildings or grounds, including playing fields and parking areas that are not school property in or on which school or school-related activities are conducted.

FISCAL IMPLICATIONS

AOC notes the fiscal impact on the judiciary will be proportional to the enforcement and commenced prosecutions. New laws have the potential to increase caseloads in the courts, requiring additional resources to handle the increase. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

DPS is unsure if the use of the phrase “school building” within the definition of “threat of a school shooting” will prevent individuals who threaten to bring a firearm to school and to use the firearm with the intent to prevent or interrupt a “school bus”, “playing field” or “parking area” with being charged. DPS notes this may be covered in the other “threat of a school shooting” subsections.

SB 146/SPACS/SJCS addresses the concern raised by DPS in regard to the definition of “threat of a school shooting” by defining “threat of a school shooting” to mean a threat “to bring a firearm to a school **and** to use the firearm, with intent to....”

NMAG notes SB 146/SPACS/SJCS addresses the concern regarding the definition of “school threat”.

AOC notes criminalizing the communication of someone’s “intention” to commit an act without additional elements of a crime (i.e. a malicious intent to threaten or cause fear) may have First Amendment freedom of speech implications.

The threat of a school shooting is typically prosecuted under Section 30-20-13D NMSA 1978, a misdemeanor offense. However, juveniles violating this section may be charged with delinquency. SB 146/SPACS/SJCS may increase the number of minors who are convicted felons, however prosecutorial discretion would still allow for the reduction of this offense to a delinquent act for juveniles.

ADMINISTRATIVE IMPLICATIONS

A short term impact of SB 146/SPACS/SJCS is that the PED will have to notify school districts and charter schools about this change to state law, which may have to be reflected in the PED’s *Safe Schools Guide* and review rubric for Safe Schools Planning as part of the Discipline Policy Assurance (found in Appendix A of the PED *Guide*). The discipline and infraction codes located in the PED’s Student Teacher Accountability Reporting System (STARS) may need to be modified to reflect the specific offense of threat of a school shooting.

TECHNICAL ISSUES

SB 146/SPACS/SJCS does not define “firearm” nor incorporate by reference any other definition of firearm contained in the criminal code. DPS suggests incorporating by reference the definition of “firearm” contained in Section 30-7-16C NMSA 1978.

OTHER SUBSTANTIVE ISSUES

NMAG observes there is some overlap/relation with assault statutes; assault/battery against school personnel in Section 30-3-9 NMSA 1978, public nuisance in Section 30-8-1 NMSA 1978 and bomb scares in Section 30-2-16 NMSA 1978. There is no apparent conflict.

Some states have enacted statutes making it unlawful for a person to make a school threat.

- Oklahoma, it is unlawful for a person to make a threat of violence, which is a misdemeanor punishable by six months in jail. Any actual plan, attempt, or development of a scheme to commit an act of violence is a felony punishable by a maximum of 10 years in prison.
- Florida, it is a second-degree felony if a person is convicted of making a false report about planting a bomb or explosive.
- Virginia, any person who communicates a threat, in a writing, including an electronically transmitted communication producing a visual or electronic message, to kill or do bodily harm, (i) on the grounds or premises of any elementary, middle or secondary school property, (ii) at any elementary, middle or secondary school-sponsored event or (iii) on a school bus to any person or persons, regardless of whether the person who is the object of the threat actually receives the threat, and the threat would place the person who is the object of the threat in reasonable apprehension of death or bodily harm, is guilty of a Class 6 felony.

Issuing a threat, including over social media, via text message, through e-mail, is a federal crime, 18 U.S. Code § 875, Threatening Interstate Communications. Penalties are up to five years in federal prison.

VKH/