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FISCAL IMPACT REPORT

SPONSOR Hochman-Vigil/Rehm ORIGINAL DATE 01/27/21
 LAST UPDATED 02/03/21 HB 70

SHORT TITLE Domestic Terrorism Definitions SB _____

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate – See Fiscal Implications				Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (NMAG)
 Corrections Department (NMCD)
 Department of Public Safety (DPS)
 University of New Mexico (UNM)
 Department of Homeland Security and Emergency Management (DHSEM)
 Sentencing Commission (NMSC)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 70 creates the crimes of terrorism, possessing a terroristic weapon, and making a terroristic threat:

- **Terrorism:** a second-degree felony for committing any act that causes great bodily harm or death with the intent to: (1) intimidate or coerce a civilian population, including committing mass violence in a place of worship or public accommodation; (2) influence the policy of a state entity or political subdivision of the state; or (3) affect the conduct of a state entity, political subdivision of the state, or public accommodation by mass destruction, assassination, kidnapping, or an act of violence enumerated as a serious violent offense in Section 33-2-34 NMSA 1978.

- **Possessing a Terroristic Weapon:** a third-degree felony for manufacturing, fabricating, or possessing, in any manner and with the intent to commit terrorism, a weapon: (1) designed or intended to cause death or serious physical injury by the release, dissemination, or impact of toxic or poisonous chemicals or their precursors; (2) involving any biological agent, disease, or disease organism; or (3) designed to release radiation or radioactivity at a level dangerous to human life (other than a person when engaged in the manufacture of such weapons for lawful purposes).
- **Making a Terroristic Threat:** a third-degree felony for unequivocally, unconditionally, and specifically threatening to commit an act of terrorism, whether that threat is made online or otherwise, against a person at a school, community center (limited to locations which primarily supervise children and where children congregate), place of worship, or public accommodation, or to harm a school, community center, place of worship, or public accommodation with the intent to: (1) cause a reaction to the threat by an official or volunteer agency organized to deal with emergencies; (2) place a person in fear of great bodily harm; or (3) prevent or interrupt the occupation or use of a school, community center, place of worship, or public accommodation.

This bill also grants the attorney general the authority to prosecute cases alleging these crimes concurrently with the local district attorney.

In addition, HB70 creates a fourth new crime:

- **Cyberterrorism:** a third-degree felony for: (1) committing any of the acts prohibited by the Computer Crimes Act with the intent to intimidate or coerce a civilian population, influence the policy of a state entity or a political subdivision of the state, or affect the conduct of a state entity or a political subdivision of the state; or (2) committing a denial of service attack with the intent to intimidate or coerce a civilian population, influence the policy of a state entity or a political subdivision of the state, or affect the conduct of a state entity or a political subdivision of the state when the computer network against which the denial of service attack is committed is: (a) administered or operated by a federal entity, state entity, or a political subdivision of the state; (b) a utility provider, including a provider of electricity or water; or (c) a financial institution as defined in existing law (Section 58 -16-3(A)(23) NMSA 1978). “Denial of service attack” means preventing authorized access to computer resources or delaying time-critical computer operations by unlawfully inundating or otherwise overloading a computer network or unlawfully attempting to overload a computer service. Notably, a separate cyberterrorism occurs on each calendar day on which such an act is committed.

The penalties for two other existing crimes are increased from fourth-degree felonies to third-degree felonies:

- Teaching or demonstrating the use of a device or technique capable of causing injury to or death of any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder.
- Training, practicing or receiving instruction in the use of a device or technique capable of causing injury or death to any person with the intent that the knowledge or skill taught, demonstrated or gained be unlawfully used in furtherance of a civil disorder

Additionally, the bill adds the requirement of an intent to commit terrorism to the definitions of the two crimes above.

HB70 enacts a new statutory section within the Antiterrorism Act requiring state agencies to report any possible violation of the Act to (and provides for information sharing with) the New Mexico All Source Intelligence Center (Center). HB70 requires the Department of Homeland Security and Emergency Management (DHSEM) to maintain the Center, a cross-jurisdictional partnership between local, state and federal agencies, to support the development of plans, policies and procedures that protect the state from border, criminal and terrorist threats.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC), the Public Defender Department (PDD), and the Corrections Department (NMCD) expect increased costs due to the creation of four new crimes as well as increased punishment for two existing crimes; however, these agencies were unable to provide estimates of that impact.

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 long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD reports the average cost to incarcerate a single inmate in FY20 was \$44.8 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 \$23.3 thousand per inmate per year across all facilities. This bill will likely increase the number of individuals incarcerated and increase the time they spend incarcerated, but it is difficult to determine how many individuals would be charged or convicted of the new crimes created by the bill.

The impact to the judiciary would be proportional to the enforcement of this law and new prosecutions, according to AOC, which notes that as penalties increase, more jury trials are likely. Similar proportionate impacts would apply for PDD and district attorneys.

NMAG reports that the expansion of its criminal jurisdiction to include the crimes being established in Section 3 of this bill may require additional resources, but did not estimate a cost.

SIGNIFICANT ISSUES

DPS calls attention to Section 1(C), which requires DHSEM to maintain the Center, a cross-jurisdictional partnership between local, state and federal agencies to protect the state from border, criminal and terrorist threats. DPS reports that, because the FBI does not recognize DHSEM as a law enforcement agency, it is not authorized to receive certain criminal intelligence information, and DPS cannot legally comply with the provisions of the bill requiring it to report that information to DHSEM. This may prevent DHSEM from performing the duties assigned to it in this subsection and in Section 4.

PDD raises overbreadth as an issue in this bill. In addition to covering behavior already punished as criminal, it argues that the new terrorism crimes this bill proposes are exceedingly broad and unduly vague so that they cast the net far too broadly to target actual terrorists. According to PDD, creating such crimes has caused problems in other states. PDD also notes terrorism is punished as a second-degree felony and includes an act that causes great bodily harm or death when done with the intent to intimidate or coerce a “civilian population,” which is not defined. Because the term could be interpreted to mean one or two people, the agency suggests it should be defined to ensure a narrower focus, such as a crowd or crowded location. But PDD also notes that, if someone were to shoot several people and either injure or kill them, that act would already fall within the scope of multiple crimes, and because the law allows for multiple charges based on multiple victims, the available penalties are already significant.

With regard to making a terroristic threat against a school, PDD expresses concerns that this is a crime that is likely to be charged against young people, like those who may call in a bomb threat because they do not want to go to school – not an act it believes should result in second-degree felony punishment. In order to target the intended offenders, PDD recommends that the bill require an act in furtherance of the threat, proof that the person had a weapon, or some other indicator that the threat is imminent, likely, and not just words alone.

The Public Education Department (PED) calls attention to Subsection D of Section 30-20-13 NMSA 1978 of existing law, which reads “No person shall willfully interfere with the educational process of any public or private school by committing, threatening to commit or inciting others to commit any act which would disrupt, impair, interfere with or obstruct the lawful mission, processes, procedures or functions of a public or private school.” Commission of these acts is a petty misdemeanor. PED advises this is the state statute under which most school threats are prosecuted in New Mexico, although juveniles violating this act may be charged with the delinquent act of interference with the education process, depending upon prosecutorial discretion. Additionally, PED points out that issuing a threat — including over social media, via text message, or through e-mail — is a federal crime.

PED also cites neuroimaging research that indicates teenagers have a heightened vulnerability to reward what drives risky behaviors. The incomplete development of brain mechanisms related to modulation of impulsive behavior reduces the tendency of teens to heed risk ([Massachusetts General Hospital Center for Law, Brain and Behavior with Harvard Medical School](#)). The bill’s definition of a threat against a school includes making a threat to commit any criminal offense involving violence against a person at a school to place a person in fear of great bodily injury. This definition may involve threatening to harm someone at school, and in such a case the threat may lead to a more severe consequence than would typically be warranted.

TECHNICAL ISSUES

On page 8, line 22, inserting the word “by” before the second “a” might clarify the exception being set forth.

The Administrative Office of the District Attorneys (AODA) suggests the new definitions of “terrorism,” “terroristic weapon,” and “terroristic threat” in Section 30-20A-3 NMSA 1978 should be included in the definition section of the Antiterrorism Act (Section 30-20A-2 NMSA 1978) for purposes of clarity.

AODA and NMAG both note that “place of worship” is not included in Paragraph 3 of Subsection C of Section 3, despite appearing in other parts of the bill. It is not clear if this exclusion is purposeful or accidental.

OTHER SUBSTANTIVE ISSUES

PED cites the K-12 Cybersecurity Resource Center’s [State of Cybersecurity 2019 Year in Review](#), which states there were 348 publicly disclosed incidents of cyberattacks on schools in 2019. This number was three times greater than the number reported in 2018. The center estimates that the number of incidents is actually much higher, as reporting requirements vary by state and are generally very weak.

AODA notes the bill does not create crimes related to a terrorism-related conspiracy or funding potential terrorist acts. The agency also notes that other states’ terrorism-related laws and federal law do not use definitions of community center that are limited and focused solely on where children are supervised.

AMENDMENTS

DHSEM suggests the following amendment to Subsection C of Section 1:

“act as liaison between federal, state and local agencies to effect the improved sharing of counterterrorism intelligence, including maintaining the New Mexico all source intelligence center, which is a cross-jurisdictional partnership between local, state and federal agencies to lead and support the collection and sharing of criminal intelligence information, development of plans, policies and procedures that protect the state from border, criminal and terrorist threats;”

The agency feels this better defines the role of the Center and aligns with the national standards for fusion centers.

ER/sb/al