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## FISCAL IMPACT REPORT

**SPONSOR** HJC **ORIGINAL DATE** 03/09/21 **LAST UPDATED** 03/12/21 **HB** 276/HJCS/aHF1#1  
**SHORT TITLE** Crime of Targeted Residential Picketing **SB** \_\_\_\_\_  
**ANALYST** Glenn

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

|              | FY21                    | FY22 | FY23 | 3 Year<br>Total Cost | Recurring or<br>Nonrecurring | Fund<br>Affected |
|--------------|-------------------------|------|------|----------------------|------------------------------|------------------|
| <b>Total</b> | See Fiscal Implications |      |      |                      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From\*

Office of the Attorney General (NMAG)  
 Law Offices of the Public Defender (LOPD)  
 Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 Sentencing Commission (NMSC)  
 Department of Corrections (NMCD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of House Floor #1 Amendment

House Floor Amendment #1 to the House Judiciary Committee substitute for House Bill 276 removes the requirement that targeted residential picketing occurring within 100 feet of a person’s residence. As a result, the offense of targeted residential picketing consists of picketing specifically directed toward a person’s residence, regardless of the distance between the picketing activities and the targeted residence.

The amendment also defines “residence” as “a single or multifamily dwelling unit that is not being used as a place of public meeting.”

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\* Responses to HB276 as originally introduced.

### Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 276 amends the Criminal Code to create a misdemeanor offense of targeted residential picketing, which consists of picketing that is specifically directed or focused toward a person's residence and takes place within 100 feet of that residence. A misdemeanor offense is punishable by a sentence of up to one year in jail and a \$1,000 fine.

“Picketing” for purposes of the offense means a person's presence intended to apprise the targeted person or household of an opinion or message. The definition of picketing includes various means of communicating a message or opinion, including vocally or by standing or marching with a sign, banner, sound amplification device or other means.

The new offense does not limit the penalties associated with the Demonstrations at Funerals and Memorial Services Act, which allows for graduated penalties up to a fourth degree felony.

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**

LOPD states that it is difficult to predict the bill's fiscal impact. Because the bill creates a new crime, it is not known how often the conduct underlying the crime presently occurs, whether it would continue, and whether it would be prosecuted. The costs associated with prosecutions of new misdemeanors may be minimal and can likely be absorbed by LOPD's budget, but the bill, if enacted, might increase the number of appeals handled by LOPD because of the potential constitutional issues raised by the bill.

HB276 creates a new misdemeanor offense. Although a misdemeanor can result in jail time, it is anticipated that the bill would have little effect on the population of state correctional facilities and NMCD reports that the bill has no fiscal impact. It is possible that the bill would increase the number of individuals sentenced to county jail terms.

### **SIGNIFICANT ISSUES**

NMAG notes that if the picketing proscribed by HB276 occurred on public property, it might implicate free speech rights under the First Amendment to the United States Constitution. *See United States v. O'Brien*, 391 U.S. 367, 375 (1968) (comparing regulation of conduct with the regulation of speech); *see generally Hill v. Colorado*, 530 U.S. 703 (2000) (providing a framework for analyzing the constitutionality of laws regulating unwelcome speech). However, NMAG also notes that the U.S. Supreme Court has acknowledged that constitutional free speech protections do not preclude regulation of picketing and similar activities in certain circumstances. As stated by the United States Supreme Court in *Hill*, “[t]he right to free speech, of course, includes the right to attempt to persuade others to change their views, and may not be curtailed simply because the speaker's message may be offensive to his audience. But the protection afforded to offensive messages does not always embrace offensive speech that is so intrusive that the unwilling audience cannot avoid it.” *Id.* at 716.

LOPD also focuses on potential constitutional free speech challenges to the bill, and notes that

the bill's restrictions on picketing targeted to a particular residence appear tailored to avoid constitutional infirmity, *see Frisby v. Schultz*, 487 U.S. 474, 486 (1988) (prohibition of “focused picketing . . . is fundamentally different from more generally directed means of communication that may not be completely banned in residential areas”).

**OTHER SUBSTANTIVE ISSUES**

LOPD notes that trespass onto private property is already punishable as a misdemeanor under Section 30-14-1 NMSA 1978. According to LOPD, in cases where private property extends 100 feet from a residence, the proposed legislation could overlap, creating the potential for punishing the same conduct under multiple statutes.

BG/sb/al