

LFC Requester:	
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AGENCY BILL ANALYSIS
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original Amendment
Correction Substitute

Date Jan. 12, 2017
Bill No: HB 79

Sponsor: Nate Gentry
Short Hate Crimes Against Law
Title: Enforcement

Agency Code: 264
Person Writing Gary Cade
Phone: 507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 79 would add "...law enforcement officer; (and) ...firefighter or an emergency medical technician when the person is on duty as a firefighter or an emergency medical technician" to the existing list of persons covered by the Hate Crimes Act. If the crime(s) committed against them were motivated by hate because of their status the presumptive punishment for the offense(s) may be increased.

FISCAL IMPLICATIONS

Unknown

SIGNIFICANT ISSUES

The expansion of the Hate Crimes Act proposed in HB 79 would only apply to crimes against law enforcement officers, and to on-duty firefighters and emergency medical technicians (EMT), in which the offenses were "motivated by hate" against them because of their status as reported in a special interrogatory for jury trials or a special finding of fact for bench trials. It is unclear why a hate crime could be charged any time a law enforcement officer was the victim of a non-capital felony, but firefighters and EMT's must be "on duty" for it to apply to them. (Cf., *Schultz v. Pojoaque Tribal Police Dep't.*, 2014—NMCA—019 (Survivors of policeman who drowned during an attempted rescue was entitled to pursue worker's compensation benefits even though the officer was off-duty, not on call and was out of his jurisdiction.)

Motive is not required to be proven for someone to be found guilty of a crime so pursuing an offense as a hate crime will add to the proof requirements. This is especially so because anything that increases the basic punishment for a criminal conviction, other than a prior conviction, must be proven beyond a reasonable doubt. See, *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and *State v. Frawley*, 2007-NMSC-057. There appear to be no reported cases interpreting New Mexico's Hate Crimes Act, and the burden of having to prove not just the crime but also the motive, beyond a reasonable doubt, is undoubtedly a significant factor in the paucity of cases litigated and appealed.

There is usually no direct evidence on motive so trying to prove a crime was committed against a law enforcement officer, or an on-duty firefighter or EMT, was motivated by hate because of their employment status will be difficult. Defendants can easily claim that their offenses against law enforcement officers and on-duty firefighters and EMT's were not motivated by hate of their victim's status but occurred because of other circumstances. If cases against them are charged as

hate crimes, then the ensuing litigation will be more complicated than if a hate crime charge was not pursued.

Defendants charged with a hate crime against a law enforcement officer may claim a double jeopardy violation because crimes against peace officers already carry enhanced penalties compared to the same offense against someone not in law enforcement. Cf., e.g., Sect. 30-22-21, NMSA 1978, Assault Upon A Peace Officer (misdemeanor) and Sect. 30-3-1, 1978, Assault (petty misdemeanor), Sect. 30-22-23, NMSA 1978, Battery Upon A Peace Officer (fourth degree felony) and Sect. 30-3-4, NMSA 1978, Battery (petty misdemeanor).

Virtually all of the other protected classes listed in the Hate Crimes Act: race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation and gender, are given special protections in other laws so there is guidance to interpret potential hate crimes against them that will be lacking if law enforcement officers, and on-duty firefighters and EMT's are included in the Act. See e.g., New Mexico Human Rights Act, Sects. 28-1-1 to 13, NMSA 1978; *Elane Photography, LLC v. Willock*, 2013—NMSC--040, (Public business may not refuse services at civil commitment ceremony of same sex couple), *Griego v. Oliver*, 2014—NMSC—003, (Same sex couples may be married under NM law), *Garcia v. Hatch Valley Public Schools*, 2016—NMCA—034 (Reverse discrimination against Caucasian person prohibited).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There are statutes already in place regarding peace officers that provide increased penalties for crimes against them. See, Sects. 30-22-21 to 30-22-27, NMSA 1978.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS