

LFC Requester:	
-----------------------	--

**AGENCY BILL ANALYSIS
2015 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: Date 1-21-16
Original **Amendment** **Bill No:** HB142
Correction **Substitute**

Sponsor: Doreen Gallegos & Jimmie Hall **Agency Code:** 264
Short **Person Writing** Gail MacQuesten
Title: Crimes Against CYFD Workers **Phone:** 466-0532 **Emai** gailmacquesten@q.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	minimal	minimal	minimal	unknown	recurring	general

(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:

HB142 enacts a new criminal statute creating the crimes of assault, aggravated assault, battery, aggravated battery, and assisting or being assisted by another in committing a battery, when the victim is an employee of the children, youth and families department during the performance of his or her duties.

“Assault” consists of an attempt to commit a battery or any unlawful act, threat or menacing conduct that causes the worker to reasonably believe that he or she is in danger of receiving an immediate battery. This offense is a misdemeanor.

“Aggravated assault” consists of unlawfully assaulting or striking at a worker with a deadly weapon, or willfully and intentionally assaulting a worker with intent to commit any felony. This offense is a third degree felony.

“Battery” is the unlawful, intentional touching or application of force when done in a rude, insolent or angry manner. This is a fourth degree felony.

“Aggravated battery” consists of the unlawful touching or application of force with intent to injury. When this offense inflicts great bodily harm or is done with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, it is a third degree felony.

Assisting or being assisted by another person in committing a battery on a worker is a fourth degree felony.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB142 will increase costs to the district attorneys by making prosecution of assault and battery more complex. If the victim is a CYFD employee, the district attorneys will need to determine if the case comes under the general assault and battery statutes or under the more specific crimes set out in HB142. If the case is brought under HB142, the district attorneys will have additional

proof elements. The litigants and courts will need to develop jury instructions for these new crimes. Increased sentences will result in increased costs for incarceration.

SIGNIFICANT ISSUES

HB142 creates new assault and battery crimes that apply when the victim is a CYFD employee acting in the course of his or her duties. HB142 generally – but not always - imposes higher penalties on these crimes than are set out in the general statutes. These new crimes generally track the language used in the general assault and battery statutes, although some provisions in the general statutes do not appear in HB142. The result is that there are inconsistencies and gaps.

HB142 is the latest statute to create specialized assault and battery crimes when the victim is engaged in a specific profession. See, for example, NMSA 1978, Section 30-3-9 for school personnel, NMSA 1978, Section 30-3-9.1 for sports officials, and NMSA 1978, Section 30-3-9.2 for health service professionals. Other specialized assault and battery crimes appear outside the criminal code. See, for example, NMSA 1978, Section 7-1-75 for employees of the Taxation and Revenue Department. HB142 appears to overlap some specific criminal statutes for certain classes of public workers. For example, Juvenile Correctional Officers in CYFD’s juvenile justice division are already protected under NMSA 1978, Section 30-22-21 through 30-22-26, which sets out specialized crimes against “peace officers.” There are also specific criminal statutes which apply to health care workers and school personnel in this division. See NMSA 1978, Sections 30-3-9.2 and 30-3-9. Because of this proliferation of specialized assault and battery statutes, prosecutors must determine if a specialized statute applies instead of the general statute (and if more than one specialized statute applies, the prosecutor must determine which one best fits the circumstance, if possible). If the specialized statute applies, the prosecution must be brought under that statute, and the prosecutor must meet the specific proof requirements set out in that statute, including the additional proof requirements regarding the status of the victim. Based on recent case law interpreting statutes governing batteries on health care workers and peace officers, it is likely that the prosecutor will also be required to show that the defendant knew the victim was a CYFD employee acting in the course of his or her duties.

Because there are so many specialized assault and battery statutes, and because they are scattered throughout New Mexico statutes, it can be difficult to maintain consistency. For example, assault and battery against a taxation and revenue employee is punishable by a fine of \$100 to \$500 or imprisonment of not less than 3 days or more than six months, or both. In other words, it is a petty misdemeanor. In contrast, a sentence for aggravated battery under the general statutes is much higher: it is a third degree felony with a potential sentence of three years. This raises the question of why a public employee should receive less protection under the criminal statutes than a private citizen. And once people engaged in specific professions are given more protection (presumably because the legislature has determined that they need additional protection) the question becomes, why is one profession deserving of more protection than another?

There are also inconsistencies between HB142 and the general assault and battery statutes. Each inconsistency creates an issue for prosecutors in interpreting the statute and in bringing the prosecution.

- Section B of HB142, the “assault” provision, tracks the language of the general assault statute, NMSA 1978, Section 30-3-1, with two exceptions.
 1. It leaves out language making “the use of insulting language toward another

impugning his honor, delicacy or reputation” an assault. So, conduct against a CYFD employee may be a specialized assault, a general assault, or both, depending on the facts of the case. There may be issues regarding whether a case may be brought under the general statute based on insulting language if the victim is a CYFD employee, because that provision was not included in the specific statute. (The absence of that provision, it may be argued, shows that the legislative intended that insulting language not be considered an assault when directed to a CYFD employee.) If such a case cannot be brought, then a CYFD employee has less protection than a private citizen.

2. HB142 raises the penalty for assault from a petty misdemeanor to a misdemeanor.

- Section C of HB142, the aggravated assault provision, generally tracks the language of the general assault statute, NMSA 1978 Section 30-3-2, but raises the penalty to a third degree felony. However, it leaves out language making an assault committed while disguised an aggravated assault. Again, this raises questions about which statute will apply in a particular case, and whether a case can be brought under the general statute if the specialized statute does not make that particular conduct a crime.
- The criminal code contains a statute covering aggravated assault with intent to commit a violent felony, which is a third degree felony. Because HB142 does not have an equivalent provision, and because Section C of HB142 covers assault with intent to commit “any felony,” employees of CYFD will only receive the protection given by HB142. Penalties against a perpetrator who commits assault with intent to commit a violent felony will be higher if the victim is a private citizen, because the case will be prosecuted under Section 30-3-3 and will be a third degree felony instead of a fourth degree felony.
- Section D of HB142, the “battery” provision, tracks the general battery provision of NMSA 1978, Section 30-3-4, but raises the degree of the crime from a petty misdemeanor to a fourth degree felony.
- Section E of HB142, the “aggravated battery” provision, tracks the general aggravated battery provision of NMSA 1978, Section 30-3-5, but only addresses batteries that inflict great bodily harm or are done with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted. Such crimes are third degree felonies under both HB142 and Section 30-3-5. But Section 30-3-5 also addresses batteries that result in an injury causing painful temporary disfigurement or temporary loss or impairment of function, making that crime higher than simple battery, but lower than aggravated battery inflicting great bodily harm or done with a deadly weapon. HB142 does not recognize a crime between simple battery and aggravated battery inflicting great bodily harm or done with a deadly weapon.
- Section F of HB142 makes it a fourth degree felony to assist, or be assisted by someone else, in the commission of a battery on a CYFD employee. In effect, this creates a new type of accessory crime or conspiracy crime specific to the crime of battery on a CYFD employee. Accessory is already covered under NMSA 1978, Section 30-1-13, and conspiracy is already covered in NMSA 1978, Section 30-28-2. There is no need to further complicate the criminal statutes by making specific accessory and conspiracy crimes related to specific underlying crimes. In addition, the crime of being assisted by someone else in the commission of a battery may be challenged – it contains no requirement that the person being assisted have any knowledge or intent that another person participate.

PERFORMANCE IMPLICATIONS

As discussed above, if the victim of an assault or battery is a CYFD employee, the prosecutor will need to determine if the general statute or one of several possible specialized statutes applies, whether particular crimes can be charged under the general statute if they do not appear in the specific statute, and what additional items of proof are required under the specialized statute. The prosecutor may consider charging the crime in the alternative, if it is not clear which crime applies. Having alternative crimes with subtle distinctions will require carefully worded jury instructions.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

See Significant Issues, above.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Assaults and batteries against CYFD workers will be prosecuted under existing statutes on assault and battery.

AMENDMENTS

None proposed.