

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 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 Jan. 15, 2019
Original **Amendment** **Bill No:** HB115
Correction **Substitute**

Sponsor: Randal S. Crowder **Agency Code:** 264
Short Create Crime of Making **Person Writing** Gail MacQuesten
Title: Terrorist Threat **Phone:** 505 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	unknown	unknown	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:

HB115 enacts a new section of the Criminal Code to create a new fourth degree felony, “Making a Terroristic Threat.”

“Terroristic threat” is defined as a threat to commit any offense involving violence to a person or to property that is unequivocal, unconditional and specific so as to convey a gravity of purpose and the immediate prospect of execution. The threat must be made with one of the following intents:

- Intent to cause a reaction of any type to the threat by an official or volunteer agency organized to deal with emergencies;
- Intent to place a person in fear of great bodily harm;
- Intent to prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile or other form of conveyance or other public place;
- Intent to cause impairment or interruption of public communications, public transportation, public water, a public gas or power supply or other public service;
- Intent to influence the conduct or activities of a branch or agency of the federal government, the state or a political subdivision of the state.

HB115 does not require the intended victim(s) to experience fear or react to the threat.

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.

Because HB115 creates a new crime, it may increase litigation and therefore may increase costs to the district attorneys.

SIGNIFICANT ISSUES

Courts have recognized that some dangerous forms of speech should be prohibited. Other states

have enacted statutes addressing terrorist threats, and federal law prohibits certain threats. See 18 U.S.C. §2332b(c)(1)(g). Threats made in New Mexico using a telephone, telegraph or instrument of commerce may be prosecuted under federal law. See 18 U.S.C. 844(e). As discussed below, New Mexico has some criminal statutes that can be used to address some threats under state law, but it does not have a general statute addressing threats. HB115 makes it a crime to threaten to commit an offense involving violence to a person or property. The reach of the statute is limited: the threat must be unequivocal, unconditional and specific so as to convey a gravity of purpose and the immediate prospect of execution. And the threat must be made with one of 5 listed intents.

Overlap

New Mexico has a number of criminal statutes that can be used to address threats. For example, the general assault statute prohibits any threat or menacing conduct which causes another person to reasonably believe that he is in danger of receiving an immediate battery. (In assault cases, the focus is on the victim: did the victim believe he was in danger of receiving an immediate battery.) New Mexico also has multiple assault statutes addressing assault to specific victims (family members, peace officers, sports officials, health care personnel, and school personnel). New Mexico also has some very specific statutes addressing threats. For example, Section 30-20-12 NMSA 1978 prohibits use of a telephone to make threats. Section 30-20-16 NMSA 1978 addresses bomb scares.

HB115 describes the nature of the prohibited threat (it must be a threat to commit an offense involving violence to a person or to property, it must be unequivocal, unconditional and specific so as to convey a gravity of purpose and the immediate prospect of execution). But HB115 is not limited to specific types of threats (bombscares, for example) or specific means of conveying the threat (use of a telephone, for example). It does not focus on the reaction of the intended victim (the victim does not have to believe he is in danger). Instead, the focus is on the intent of the person making the threat.

HB115 will cover some threats that are not easily prosecutable under existing statutes. But it may also cover threats that could be prosecuted under multiple statutes. For example, a telephoned bomb scare may be prosecuted under the bomb scare statute, the use of a telephone statute or the assault statute, as well as under HB115. The prosecutor will need to determine which statute applies (with a more specific statute usually applying). Prosecuting conduct under multiple statutes will have to be evaluated for double jeopardy concerns.

Interpretation

HB115 raises a number of interpretation issues.

It appears that HB115 is focused on threats that impact the public, or government entities. However, it also covers a threat that places a person in fear of great bodily harm. So a threat to punch someone or slash their tires could be a terroristic threat under HB115.

The threat must convey the immediate prospect of execution. A defendant's threat that "someday" he will come back to shoot up an office, school, or church will probably not be actionable under HB115.

PERFORMANCE IMPLICATIONS

See Significant Issues, above.

ADMINISTRATIVE IMPLICATIONS

See Significant Issues, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Threats will have to be prosecuted under the assault statutes or the specific statutes such as those prohibiting using telephones for threats, and prohibiting bomb scares.

AMENDMENTS

None proposed.