

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:
Original **Amendment**
Correction **Substitute**

Date Jan. 18, 2019
Bill No: HB198

Sponsor: Kelly K. Fajardo
Short Title: Crime of Assault on
CYFD Workers

Agency Code: 264
Person Writing Gail MacQuesten
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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:

HB198 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 public service worker of the children, youth and families department who is in the lawful discharge of his or her duties.

“Public service worker” means an employee of the children, youth and families department who works directly with children and families in either the protective services division or juvenile justice division and includes any child protection investigator, family services worker, client service worker, permanency planning worker, placement worker, foster care worker, adoption worker, social worker, in-home services worker, youth transition coordinator, case worker, juvenile probation officer or family-centered mediator or any supervisor of any of those or any person authorized to transport clients for the department.

“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 injure. 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.

HB198 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 HB198. If the case is brought under HB198, 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

HB198 creates new assault and battery crimes that apply when the victim is a CYFD employee acting in the course of his or her duties. HB198 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 HB198. The result is that there are inconsistencies and gaps.

HB198 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. HB198 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.

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, any 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?

If the goal of specialized assault and battery statutes is to have increased penalties based on the victim, another problem arises when those specialized statutes are separate from the basic assault and battery statutes. If the penalties are increased in the basic assault and battery statutes, all the specialized statutes will need to be changed to raise their penalties. Otherwise, the specialized

statutes will carry the same, or lesser, penalties than the basic statutes.

Having different definitions of the crimes in the specialized statutes and the basic statutes means that we will have a different criminal code for crimes against CYFD workers, and that can lead to complications in prosecution. There are important inconsistencies between HB198 and the general assault and battery statutes. Each inconsistency creates an issue for prosecutors in interpreting the statute and in bringing the prosecution. And some of those inconsistencies mean that a crime against a CYFD worker may carry a lower penalty than a crime against a private citizen, which is probably not the intent of the drafters of HB198:

1. Section B of HB198, the “assault” provision, tracks the language of the general assault statute, NMSA 1978, Section 30-3-1, with two exceptions.
 - 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 legislature 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.
 - HB198 raises the penalty for assault from a petty misdemeanor to a misdemeanor.
2. Section C of HB198, 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.
3. Section D of HB198, 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.
4. Section E of HB198, 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 HB198 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. HB198 does not recognize a crime between simple battery and aggravated battery inflicting great bodily harm or done with a deadly weapon.
5. Section F of HB198 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.

There is another difference between HB198 and the general assault and battery statutes that is not apparent from a simple reading of the statutes. 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.

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

HB102, Police Officers as Victims of Crime, points out another issue with having special criminal statutes for assault and battery based on the victim's profession. New Mexico's Victims of Crime Act, Section 31-26-3 NMSA 1978, sets out the rights for victims of certain specified crimes, including the general assault and battery statutes. HB102 seeks to amend the act to give the same rights to police officers who are victims of the specialized assault and battery statutes that apply when police officers are the victims. To protect all victims of assault and battery, the Act would have to be amended to include taxation and revenue employees, school personnel, health care workers and sports officials. If HB198 passes, it will also need to be amended to cover CYFD employees.

TECHNICAL ISSUES

See Significant Issues, above.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

New Mexico could eliminate its specialized assault and battery statutes, and prosecute all assaults and batteries under the general statutes, so that the elements of the crimes are consistent. If the legislature wishes to enhance the sentences when the victim is a member of a special class, such as a police officer, health care worker, or CYFD employee, it could enact a sentence enhancement statute to address each class. That would simplify prosecution, because the prosecutor would know to apply the general statute (and add elements regarding the identity of

the victim, if applicable). It would simplify criminal legislation, because statutes addressing assault and battery would only need to address the general statutes. It would also be easy to see how punishments under the general statutes for assault and battery compare to punishments under the sentence enhancement statutes.

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.