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# FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 2/12/2025

**SPONSOR** Lord/Block

**BILL**  
**NUMBER** House Bill 320

**SHORT TITLE** Necrophilia as a Crime

**ANALYST** Dinces

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
LOPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMCD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
DPS	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
<b>Total</b>	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
 \*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
 Law Office of the Public Defender (LOPD)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)

#### Agency Analysis was Solicited but Not Received From

Administrative Office of the District Attorneys (AODA)  
 New Mexico Sentencing Commission (NMSC)

## SUMMARY

### Synopsis of House Bill 320

This bill was submitted with slight differences in the 2024 Regular Session as HB60 but was not printed or heard by a committee.

House Bill 320 (HB320) seeks to create three new crimes: (1) criminal desecration of a human body (fourth-degree felony); (2) criminal sexual contact with a dead human body (third-degree felony); and (3) criminal sexual penetration of a dead human body (second-degree felony).

(1) Criminal Desecration of a Dead Human Body would outlaw unlawful dismemberment, disfigurement, mutilation, or burning of a dead human body or any unlawful act that

causes a dead human body to be devoured or scattered.

- (2) Criminal Sexual Contact of a Dead Human Body would explicitly criminalize unlawful, intentional touching of clothed or unclothed intimate parts of a dead human body or intentionally causing a dead human body to touch the intimate parts of another person.
- (3) Criminal Sexual Penetration of a Dead Human Body would explicitly criminalize the unlawful, intentional causing of a dead human body to engage in sexual intercourse, oral or anal sex, or any penetration (to any extent, with any object, regardless of emission) of the genitals or anus of a dead human body.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

According to LOPD:

This bill will likely have little fiscal impact. There do not appear to be many cases that would fall into this proposed statute, though it does fill a gap in state law for rare cases. The only potential fiscal increase might be for expert testimony/testing for both the prosecution and the defense to try to determine, in close cases, whether the victim was alive or dead at the time of the alleged conduct. Due to the small number of prosecutions, LOPD would likely be able to absorb some cases under the proposed law.

Analysis from AOC, DPS, and NMCD suggests no significant fiscal impact.

## SIGNIFICANT ISSUES

LOPD discusses several issues with the proposed legislation:

It does not appear necessary to create a new crime of this type in New Mexico for at least three reasons: (1) the acts covered by this bill are exceedingly rare and typically accompany other crimes that can already be charged (like rape, homicide, and tampering with evidence); (2) the judiciary has already crafted a path to conviction for the most common (though still exceedingly rare) occurrences of sexual act(s) covered by this bill; and (3) adding new crimes, especially those with the steep penalties proposed by this bill, is not an effective way to increase public safety.

The closest NM has to an “abuse of a corpse” statute is NMSA 1978, § 24-12-3 (2023), but it only applies to those who “conduct[] a post-mortem examination on an unclaimed body without express permission of the medical investigator” or who “unlawfully dispose of, use or sell an unclaimed body.” The “desecration” crime created by this bill would expand this prohibition to the general public and add further acts to the list of unlawful behavior with a corpse. Many jurisdictions have “abuse of a corpse” statutes for non-sexual acts committed upon a dead body. This bill is also, on the whole, more specific and clearer than some states’ “abuse of a corpse” statutes, which eliminates some potential challenges to the statute during litigation.

In short, it would seem that the bill seeks to address a “gap” in the state’s criminal law relating to necrophilia, but this gap is so rarely (if ever) at issue, and the most common scenario has already been addressed by *State v. Martinez*, 2021-NMSC-012 (holding, as a

matter of first impression, in circumstances where the perpetrator renders the victim physically helpless by killing the victim before committing criminal sexual penetration, the deceased victim is a legal “person” for the limited purpose of applying the criminal sexual penetration statute). It is questionable whether there is any efficacy in adding crimes to the books for acts that almost never happen. It is a solution in search of a problem.

The bigger problem with this bill, if it were to be enacted, is the punishment levels, as compared to other existing crimes, particularly those committed against live victims. As is clear from the above Ohio statute, most other states make “abuse of a corpse,” even when sexual, a *lesser* offense than the same acts committed against a living person. *See, e.g.,* Ind. Code § 35-45-11-2 (criminalizing “mutilation,” “sexual intercourse or other sexual conduct,” and “opening a casket with the intent” to mutilate or have sex with the body inside—but as a Level 6 felony, the lowest-level felony in the state). Similarly, these laws usually collapse what the bill here describes as criminal sexual contact and criminal sexual penetration into a single offense.

This bill, by contrast, makes criminal sexual penetration more serious than criminal sexual contact for a dead human being. *See* NMSA 1978, §§ 30-9-11, 30-9-12, 30-9-13. In fact, this bill would make criminal sexual penetration of a corpse the same level of seriousness as gang rape of a living person or rape using force or coercion against a living teenager; even more strangely, this bill makes criminal sexual penetration of a corpse *more serious* than rape of an unconscious person, rape of a teenaged student by their teacher, or statutory rape. *See* § 30-9-11(E)-(G). This structure is not commensurate with the dignity and protections afforded to the living, especially children.

## PERFORMANCE IMPLICATIONS

DPS states:

Adding criminal desecration of a dead human body to the criminal code could allow investigators to charge homicide suspects, who have attempted to impede an investigation or discovery of a body by dismemberment, disfigurement, mutilation, or burning of a dead human body.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill is almost identical to HB60 from the 2024 legislative session.

## TECHNICAL ISSUES

LOPD enumerates several technical concerns:

It is unclear from the bill where the sponsors intend for it to be chaptered. Because the language of two of the new crimes tracks the language used in other crimes in Chapter 30, Article 9, it should likely go there. However, because it relates to the treatment of a dead body, not a living victim, it could also be added to Chapter 24 (Health & Safety, where the unauthorized autopsy statute resides) or Chapter 30, Articles 8 or 20 (Criminal Offenses: Nuisances and Crimes Against Public Peace). It could also be inserted as Chapter 30, new Article 9b, after last year’s Animal Sexual Abuse Act.

If enacted, it would be desirable to add language that excludes appropriate processes used to prepare a body for burial, such as autopsy, embalming, burial without a casket, storing/scattering ashes, and culturally-specific rites. The word “unlawful” in the statute does a lot of work, but some of these post-death procedures are not explicitly allowed by NM law, therefore making it unclear whether they are “unlawful.” This would also prospectively protect any alternative burial rites that might be approved by the state in the future. *Cf.* NMSA 1978, § 30-9-11(B) (“Criminal sexual penetration does not include medically indicated procedures”).

One problem with the “desecration” crime as formulated in this bill is the criminalization of “any unlawful act that causes a dead human body to be devoured or scattered.” *See* Section D. This would invite double jeopardy challenges, as well as proximate cause and vagueness challenges. For one, if the “unlawful act” that led to the body’s destruction by animals was the same act that led to the person’s death or that constituted a separate charge of tampering (at most, a third-degree felony), there would be a strong double jeopardy argument against multiple punishments for a single act. The proximate cause and vagueness arguments would attack the foreseeability of the “devouring”/“scattering,” as well as what acts would be sufficient to “cause” that destruction. Merely leaving a body on the ground? Leaving it on the ground but hiding it so it won’t be found quickly? Would the natural processes of decay (including bacteria, insect, and worm activity) count? How much of the body would have to be eaten by a wild animal for it to have been “devoured” or “scattered”? “Devoured” and “scattered” are not words commonly used in criminal statutes and would likely invite litigation. This particular prong of the statute would be more appropriately handled within a regulatory/administrative scheme.

SD/hj/SR