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## FISCAL IMPACT REPORT

SPONSOR Maestas ORIGINAL DATE 02/25/13  
LAST UPDATED \_\_\_\_\_ HB 597  
SHORT TITLE Increase and Decrease Certain Crime Penalties SB \_\_\_\_\_  
ANALYST Jorgensen

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	\$5,200.0	\$5,200.0	\$10,400.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Attorney General's Office (AGO)  
New Mexico Corrections Department (NMCD)  
New Mexico Sentencing Commission (NMSC)  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

This bill creates a new crime of Mutilation for inflicting an injury to a person that causes permanent disfigurement or loss or impairment of the functions of any member or organ of the body, punishable as a special penalty third degree felony with a basic sentence of six years.

Further, the bill modifies NMSA 30-2-1 to include a special penalty of 20 years instead of 15 for a second degree felony resulting in the death of a human being in addition to making gender neutral textual changes to the statute.

Similarly, the bill heightens the penalty for voluntary manslaughter to a penalty of 10 years from a third degree felony resulting in the death of a human being which is currently 6 years.

The bill would also reduce penalties for the crime of possession with intent to distribute to a third degree felony (from a second degree felony) for a first offense, and to a second degree felony for a second or subsequent offense (from a first degree felony for second and subsequent offenses).

Finally, the bill seeks to update NMSA 33-2-34(G) to substitute life imprisonment without the possibility of release or parole from the current language which excludes eligibility for earned meritorious deductions in sentences of life imprisonment or death penalty, and adds the new crime of mutilation as a “serious violent offense.”

**FISCAL IMPLICATIONS**

The NMSC reported that on June 30, 2012, 377 offenders committed to the custody of the NM Corrections Department (NMCD) had a second degree murder conviction as their highest charge. On that same date, 62 offenders committed to the NMCD had a voluntary manslaughter conviction as their highest charge.

The table below reflects the estimated increased costs to the NMCD as a result of the penalty enhancements contained in HB 597. The estimate is based on the number of individuals convicted for each crime per year multiplied by the sentence increase and the annual incarceration cost.

Conviction	Number of convictions per year	HB 597 sentence increase	Annual incarceration cost	HB 597 estimated annual cost
2nd murder	29.6	4.25	\$ 31,686	\$ 3,981,874
Voluntary manslaughter	12.2	3.4	\$ 31,686	\$ 1,309,688

Although the cost of the increased sentences is known, no data pertaining to drug possession with intent to distribute was provided. This may be significant as the penalty decrease from a basic sentence of nine years to a basic sentence of three years would create a cost savings of approximately \$90 thousand per offender if the average offender’s sentence were decreased by three years.

With regard to the Courts, District Attorneys, and PDD, because there are both penalty increases and decreases contained in the bill, it is difficult to anticipate what effect the enactment of this legislation would have on the operating budgets of the agencies involved.

**SIGNIFICANT ISSUES**

The NMCD notes that it is difficult to assess the impact of this bill, which on the one hand creates a new third degree felony and increases the criminal penalties for second degree murder and manslaughter, and on the other hand reduces the criminal penalties (or incarceration periods) for drug trafficking. It appears that perhaps a small number of individuals would be convicted of mutilation, a new third degree felony crime, while a larger number of those convicted of drug trafficking would serve shorter criminal sentences. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department’s inmate population or probation/parole caseloads. NMCD conservatively estimates the fiscal impact of this bill would be minimal, but this is only an estimate.

**OTHER SUBSTANTIVE ISSUES**

If HB 597 is enacted, the proposed basic sentence for second degree murder (20 years) would exceed the basic sentence for a first degree felony (18 years).

If HB 597 is enacted, the proposed basic sentence for voluntary manslaughter (10 years) would exceed the basic sentence for a second degree felony (9 years).

**ALTERNATIVES**

The PDD suggests that if the aim of the act in creating a separate crime of mutilation is simply to increase sentences or penalties where the harm resulting from an aggravated battery is permanent disfigurement or great bodily harm, a more direct approach would be to amend the aggravated battery statute and provide for additional time under such circumstances or to amend the sentencing statute to make basic sentences for third-degree felonies resulting in death or great bodily harm six years.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 597 conflicts with HB 123, 126, 142, 265, 438, 487, 587 and SB 183 and 415.

NCJ/blm