

LFC Requester:

Felix Chavez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: Jan. 21, 2021

Check all that apply:

Bill Number: HB 103

Original Correction
Amendment Substitute

Sponsor: Rep. A. Reeb

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: BATTERY ON PEACE OFFICER PENALTY

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: HB 103 proposes two changes to NMSA 1978, Section 30-22-25, prohibiting aggravated battery upon a peace officer. First, HB 103 amends gendered language used throughout Section 30-22-25 to gender-neutral language.

Second, HB 103 proposes to amend NMSA 1978, Section 30-22-25(C) to elevate the crime of aggravated battery upon a peace officer from a third-degree felony to a second-degree felony when the crime inflicts great bodily harm, is committed with a deadly weapon, or is done in a manner that could result in great bodily harm or death. This change would increase the basic sentence for the offense from three years of imprisonment, for third-degree felonies, to nine years of imprisonment, for second-degree felonies. *See* NMSA 1978, Section 31-18-15.

The effective date of the amendments would be July 1, 2025.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

As it stands today:

- Assault with intent to commit violent felony upon peace officer is a 2nd Degree Felony Offense which carries a basic sentence of 9 years imprisonment. *See* NMSA 1978, Section 30-22-23; *see also* NMSA 1978, Section 31-18-15.
- Aggravated battery upon peace officer, when “inflicting great bodily harm, or does so with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted, is guilty of a third degree felony,” which carries a basic sentence of 3 years imprisonment. *See* NMSA 1978, Section 30-22-25(C); *see also* NMSA 1978, Section 31-18-15.

By way of background, there is no physical contact in an assault. An assault is an attempted battery or conduct that makes an individual believe they are in danger of an immediate battery. In contrast, in a battery there is physical contact (“the unlawful, intentional touching or application of force”). As noted above, there is an incongruity in the degree of felony and resulting basic sentence for assault with intent to commit a violent felony on a peace officer

(NMSA 1978, Section 30-22-23) and aggravated battery on a peace officer with great bodily harm or with a deadly weapon (NMSA 1978, Section 30-22-25(C)).

Under the current law, a person who shoots at, but **misses** a peace officer faces higher basic sentence (nine years) than the person who shoots at and **hits** a peace officer with a firearm, inflicting great bodily harm (three years). By increasing the felony degree and associated basic sentence for aggravated battery on a peace officer with a deadly weapon or with great bodily harm under NMSA 1978, Section 30-22-25(C), the bill would bring this penalty in line with and equal to the penalty for aggravated assault on a peace officer with intent to commit a violent felony under NMSA 1978, 30-22-32.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None.