

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 10 February 2025
Bill No: HB 318-280

Sponsor: Stefani Lord and John Block
Short Title: Penalty for Resisting or Evading Officers
Agency Name and Code Number: 280 Law Offices of the Public Defender [LOPD]
Person Writing: Kate Baldrige
Phone: 505-395-2890 Email: Kathleen.baldrige@lopnm.us

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 Expenditure 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: Companion to/ Relates to HB 103
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 318 is identical to HB 96 from the 2024 legislative session. The bill seeks to amend NMSA 1978, Section 30-22-1(B) to increase the penalty for the crime of resisting, evading or obstructing an officer from a misdemeanor to a fourth-degree felony.

FISCAL IMPLICATIONS

While the LOPD would likely be able to absorb cases under the proposed penalty increase, any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

Specifically, the proposed increase in penalty (from a misdemeanor to a felony with collateral consequences) is concerning in that many more cases are more likely to go to trial. If more trials result, LOPD is likely to need to hire more trial attorneys. These trials would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Assessment of the impact would be necessary after the implementation of the proposed legislation, but such is likely to result in a requirement for additional funds to LOPD in order to provide constitutionally required effective assistance of counsel.

Presumably the courts, and DAs would be affected in similar measure to LOPD.

SIGNIFICANT ISSUES

Resisting arrest is typically charged *in addition to* whatever crime the person was being arrested for, and if resistance is physical, is often accompanied by charges for assault (which

includes verbal aggression), or battery on a peace officer (which includes spitting on an officer). Because cases involving a resisting charge very often already include felony crimes and significant combined sentences, the proposed increase is unnecessary and would only have a notable impact in cases where the resisting is *non-violent*, which are the cases properly treated as misdemeanors.

Further, there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. This change would not improve public safety and, at most, would simply increase incarceration rates, which would increase costs and population in NMCD.

PERFORMANCE IMPLICATIONS

See *Fiscal Implications*, above.

ADMINISTRATIVE IMPLICATIONS

See *Fiscal Implications*, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

As the title of HB 318 suggests, the crime of resisting, evading, or obstructing, applies to a person *avoids* interacting with law enforcement, not a person affirmatively trying to interfere with law enforcement's duties. It also includes any failure to comply with verbal orders or physically resisting arrest, no matter how minimally or ineffectually.

Reviewer notes that misdemeanor resisting is very often submitted to the jury or offered as a plea bargain as a lesser included offense of more serious charges. As noted in the fiscal implications section, by increasing this charge to a felony, many cases that would have pled to this charge as a misdemeanor will now go to trial for lack of a misdemeanor alternative.

ALTERNATIVES

Status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None known.