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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Reeb/Chavez, N</u>	<b>LAST UPDATED</b> <u>2/12/25</u>
	<b>ORIGINAL DATE</b> <u>1/2/25</u>
<b>SHORT TITLE</b> <u>Battery on Peace Officer Penalty</u>	<b>BILL NUMBER</b> <u>House Bill 103</u>
	<b>ANALYST</b> <u>Valdez</u>

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	No fiscal impact	At least 42.3	At least 42.3	Recurring	General Fund
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	No fiscal impact	No fiscal impact	At least 42.3	At least 42.3	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)  
 New Mexico Attorney General (NMAG)  
 Sentencing Commission (NMSC)  
 Corrections Department (NMCD)  
 Department of Public Safety (DPS)

## SUMMARY

### Synopsis of House Bill 103

House Bill 103 (HB103) amends Section 30-22-225 NMSA 1978 to increase the penalty for aggravated battery on a peace officer inflicting great bodily harm, aggravated battery on a peace officer with a deadly weapon, or aggravated battery on a peace officer in a manner in which death or great bodily harm can be inflicted from a third-degree felony to a second-degree felony.

The effective date of this bill is July 1, 2025.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. Longer sentences are expected to result in fewer

releases relative to admissions, driving up overall populations. LFC staff calculated the average cost to incarcerate a single inmate in FY24 was \$56.7 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. HB103 is anticipated to increase the time individuals spend incarcerated for this crime.

Because HB103 enhances the sentence for an existing crime, the fiscal impacts of this change are not anticipated to be realized until the first group of offenders admitted under the enhanced sentence have served the term they would have served under the original sentence. Under the original sentence, offenders served an average of 646 days (based on the average time served for offenders released from prison in FY22 whose highest charge was for this offense). As a result, offenders admitted to prison in FY26 subject to HB103 would begin to impact costs in FY27, when they remain in prison serving a longer sentence rather than being released as they would be under the current sentence. As more people are admitted to prison, costs increase. Costs continue to rise for each year until offenders admitted in the first year the change takes effect begin to leave prison after the change in time served resulting from HB103.

Based on the number of individuals in prison for this offense as of June 2024, this analysis estimates the changes proposed by HB103 will impact approximately four additional individuals per year. Based on actual time served for second-degree felonies for offenders released from prison in FY22, provided by the New Mexico Sentencing Commission (NMSC), these individuals will spend an additional 1,743 days in prison each due to the changes proposed by this bill, a cost of \$134.6 thousand per offender. These additional costs will begin in FY28, increasing over the following five years (as more individuals serve longer sentences for this crime) and leveling out at \$538.7 thousand in FY33 (as offenders begin to be released from prison) and future fiscal years.

The Administrative Office of the Courts notes:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

However, given that this analysis assumes that HB103 will only affect four additional individuals annually, these costs are assumed to be minimal.

This analysis does not include the potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. The certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

## **SIGNIFICANT ISSUES**

Research shows that the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. These findings suggest increasing penalties for crimes

is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

The NMSC notes the following issue:

Aggravated battery upon a peace officer is also a lesser included offense of assault with intent to commit a violent felony upon a peace officer (Section 30-22-23 NMSA 1978). See *State v. Bojorquez*, 1975-NMCA-075. Assault with intent to commit a violent felony upon a peace officer is a second-degree felony. If HB103 is enacted, the penalty for the lesser included offense, aggravated battery upon a peace officer, would potentially be the same as the penalty for the greater offense, assault with intent to commit a violent felony upon a peace officer.

The New Mexico Attorney General points out that the law currently imposes a steeper penalty of nine years for attempting but failing to shoot a peace officer, than it does for successfully shooting a peace officer with a firearm which would only carry a sentence of three years. Increasing the penalty as proposed by HB103 would bring the “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.”

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