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FISCAL IMPACT REPORT

SPONSOR	<u>Sen. Maestas/Rep. Chavez</u>	LAST UPDATED	<u>1/27/2025</u>
	<u>Aggravated Burglary & Home Invasion</u>	ORIGINAL DATE	<u>1/27/2025</u>
SHORT TITLE	<u>Crimes</u>	BILL	
		NUMBER	<u>Senate Bill 153</u>
		ANALYST	<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 (see Fiscal Implications)	No fiscal impact (see Fiscal Implications)	No fiscal impact (see Fiscal Implications)	No fiscal impact (see Fiscal Implications)	Recurring	General Fund

Parenteses () 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)
 Administrative Office of the District Attorneys (AODA)
 Law Office of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 153

Senate Bill 153 (SB153) amends Section 30-16-4 NMSA 1978 to remove “dwelling” from the definition of aggravated battery and adds in a new crime of home invasion.

Section 1 of the bill removes the word “dwelling” from the definition of aggravated battery, updates language to be gender neutral, and makes minor updates to other language for clarity.

Section 2 of SB153 creates the crime of home invasion as a second-degree felony. Home invasion consists of unlawful entry while the occupant is inside with intent to commit a theft or felony while armed with a deadly weapon, arming oneself with a deadly weapon upon entering, or committing an unlawful act, threatening, or menacing another person who is caused reasonable fear of battery.

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

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill. 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 long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department reports the average cost to incarcerate a single inmate in FY24 was \$56.2 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost of each additional inmate) of \$28.2 thousand per inmate per year across all facilities. Eventually, this bill would likely increase the number of individuals incarcerated and increase the time they spend incarcerated.

SB153 would lower the threshold required for a perpetrator to receive a second-degree felony. Under current law, the perpetrator would have to either be armed with a deadly weapon, become armed with a deadly weapon upon entering, or commit battery upon the occupant of the dwelling for it to rise to second-degree aggravated burglary. Under SB153, if the occupant reasonably fears immediate battery, then the new second-degree home invasion charge would apply even if there is no battery and the offender was unarmed. If the offender is armed it would be a second-degree felony under both the existing and proposed law.

The result of this change would be fewer charged with third-degree burglary, and more charges of second-degree home invasion. The average length of stay in a state correctional facility for third-degree felonies is 2.5 years, for second-degree felonies it is four years. Therefore, we would expect those committing home invasion to spend 1.5 additional years in prison above what they would have under existing law. However, given that that an individual incarcerated under the relevant statute in FY26 will be in prison for approximately 2.5 years with or without SB153, the state would not incur additional costs under SB153 until FY28. Assuming one person charged with home invasion per year, in FY28 costs would increase by \$14.1 thousand, before increasing to \$41.7 in FY29 and remaining at that level into the future.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs to law enforcement to investigate and arrest individuals for the new and expanded crimes under SB153 are not included in this analysis but could be significant.

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

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. 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. 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.

The Administrative Office of Courts (AOC) suggests other language that may lend clarity consistent with the bill’s intent:

If it is intended for a person entering an unoccupied dwelling with a deadly weapon, or after entering becomes armed with a deadly weapon, or commits a battery entering, leaving or while inside, to continue to be guilty of a second degree felony rather than a third degree felony, Section 30-16-4 NMSA 1978 could be amended to apply to an “unoccupied dwelling,” while the new Section 30-16-4.1 NMSA 1978 would apply to an occupied dwelling.

The New Mexico Attorney General (NMAG) notes that the original law applied whether there was an occupant in the dwelling or not. That is, the current law can penalize a person with a second-degree felony if they break into a home with a deadly weapon even if the home is unoccupied. The issue of whether the house is occupied presents other complications as well. NMAG points out,

The proposed amendment could pose difficulties to the prosecution of the crime if, for example, the occupant walks in on a home invader, mid-robbery. There would be no unlawful entry of the dwelling while an occupant was inside, even if the offender was armed.

The burglary statute mirrors the current aggravated burglary statute. Burglary consists of “the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.” *See generally*, NMSA 1978 §30-16-3. The criminal penalty for a burglary in a “dwelling house” is a third-degree felony. NMSA 1978 §30-16-3 (A). The penalty for “any vehicle, watercraft, aircraft or other structure...” is a fourth-degree felony. NMSA 1978 §30-16-3(B). Therefore, there is a heightened penalty for a crime committed in a “dwelling house.” The Aggravated Burglary statute notates “dwelling” not “dwelling house” in the list of enumerated places in which the crime may occur. This linguistic difference may infer a broader interpretation and ambiguity. New Mexico Courts have noted that the Legislature has not provided a statutory definition of “dwelling house” for purposes of the burglary statute. *State v. Shelby*, 2021-NMCA-064, ¶6. However, NMRA UJI 14-1631 defines a “dwelling house” as “any structure, any part of which is customarily used as living quarters.”

The Law Office of the Public Defender (LOPD) points out that the proposed law changes existing law from requiring an actual battery to only causing the victim to reasonably believe they will be battered, which constitutes assault for a second-degree felony. As assaults are a broad category that may include “minor conduct,” this penalty increase “blurs the line between third-degree and second-degree burglary.”

The Department of Public Safety (DPS) suggests SB153 could enhance protection for residents by clarifying the severity of the crime and ensuring perpetrators face consequences. DPS also argues that the change in penalty “could serve as a deterrent” and discourage criminal behavior.

PERFORMANCE IMPLICATIONS

AOC points out that the courts are participating in performance-base budgeting, and this bill may affect the numbers of cases disposed of as a percent of cases filed, and the percent change in case filings by case type.

TECHNICAL ISSUES

The New Mexico Sentencing Commission (NMSC) identifies potential ambiguity in SB153: “the phrase “the person” is used in the proposed Section 30-16-4.1(A) – page 2, line 11 – to refer to the bad actor, while it is subsequently used in Section 30-16-4.1(A)(3) – page 2, line 17 – to refer to another person (presumably the dwelling’s occupant, although that is also not specified).”

JV/r/SL2/hj