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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/21

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 64

SHORT TITLE Unlawful Use of Body Armor SB \_\_\_\_\_

ANALYST Glenn

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate-See Fiscal Implications					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Law Offices of the Public Defender (PDD)

Office of the Attorney General (NMAG)

Department of Public Safety (DPS)

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

House Bill 64 creates the crime of unlawful use of body armor. The bill makes it unlawful for a convicted felon to: (1) knowingly possess body armor or (2) knowingly wear or otherwise use body armor during the commission of a felony.

The bill provides that a convicted felon who knowingly possesses body armor is guilty of a fourth degree felony, except that a convicted felon whose felony conviction was more than ten years ago may possess body armor in the course of employment. A convicted felon who knowingly wears or otherwise uses body armor during the commission of a felony is guilty of a third degree felony.

“Body armor” is defined by HB64 as clothing or equipment “designed in whole or in part to minimize the risk of injury from a deadly weapon.”

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

PDD states that the bill would likely have minimal fiscal impact. Assuming there were relatively few prosecutions under the bill, additional costs of criminal defense could be absorbed by PDD's operating budget.

NMCD states that the fiscal impact of HB64 is difficult to estimate. Creating a new penalty for possession/use of body armor by a convicted felon could possibly increase prison or supervision time for felons. However, the number of convictions under HB64, if passed, will ultimately determine the impact of this bill. NMCD notes that the average annual cost to incarcerate a single inmate is \$44,839. This includes male, female, state and private institutions. This also includes all classification of inmates. Classification is determined by inmate's custody levels, and costs vary based on custody levels and particular facilities. The cost per client in Probation and Parole averages out to \$3,776 annually. This includes Community Corrections programs, standard supervision, and intensive supervision programs for males and females.

## **SIGNIFICANT ISSUES**

HB64's definition of "body armor," which refers to minimizing injury from a "deadly weapon," may make it vulnerable to a constitutional due process challenge. A law violates due process principles if it is so vague, broad or ambiguous that it fails to provide adequate notice of the type of conduct the law is intended to prohibit. NMAG notes that the term "deadly weapon" is not defined, which opens the possibility for interpreting the term in a manner that goes beyond firearms and other instruments generally understood to be deadly. According to NMAG, while some other states with similar statutes also define "weapon" broadly, most of them and the federal prohibition (18 U.S.C. §§ 921(a)(35), 931) apply to body armor designed to protect from injury caused by firearms. Absent a more specific definition of "deadly weapon," NMAG notes that difficult legal issues could be presented regarding the criminality of possession or use of clothing or equipment not generally considered body armor.

Like NMAG, LOPD observes that HB64's definition of "body armor" could conceivably cover a wide array of clothing and equipment, which might render prohibition unconstitutionally vague for failure to provide alert people as to what items are unlawful "body armor" under the law. *See, e.g., People v. Saleem*, 102 Cal.Rptr.3d 652, 660-61 (Cal. App. 4th 2008) (unpublished) (finding that a California statute barring felons from possessing body armor was "unconstitutionally void for vagueness because it does not provide for fair notice of which protective body vests constitute the body armor made illegal by the statute.")

NMSC also notes that statutes similar to HB64 in other states have been successfully challenged due to vagueness based on those statutes' definition of body armor. Additionally, NMSC points out that HB64's prohibition is broader in scope than the comparable federal law because it applies to any felon who possesses or uses body armor. Federal law applies only to persons who have been convicted of violent felonies.