

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/21

SPONSOR Muñoz LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Trespassing Penalties SB 358

ANALYST Chilton

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY21	FY22	FY23		
Small increase	Small increase	Small increase	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal			Minimal	Nonrecurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with Senate Bill 312.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defenders Department (LOPD)  
 Office of the Attorney General (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 Corrections Department (CD)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 358 would modify Section 30-14-1 NMSA 1978 to increase the maximum penalty

for the crime of trespassing. Currently criminal trespassing is treated, as other misdemeanors are, as encoded in Section 31-19-1:

31-19-1. Sentencing authority[;] misdemeanors; imprisonment and fines; probation.

- A. Where the defendant has been convicted of a crime constituting a misdemeanor, the judge shall sentence the person to be imprisoned in the county jail for a definite term less than one year or to the payment of a fine of not more than one thousand dollars (\$1,000) or to both such imprisonment and fine in the discretion of the judge.

The bill would increase the monetary penalty to as much as (\$2,500), leaving incarceration at one year or less.

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

### **FISCAL IMPLICATIONS**

There is no appropriation in Senate Bill 358. There would be a minimal cost of updating legal documents and probably a slight increase in revenue from increased fines.

LOPD points out, “Typically the amount of a fine has little effect on a defendant’s decision to plead or go to trial, so the fiscal impact is likely to be negligible.”

### **SIGNIFICANT ISSUES**

AOC comments extensively on case law to support its belief that a differential penalty for trespassing might be challenged in court. Its conclusion follows:

While SB 358 includes language stating ‘notwithstanding the provisions of Section 31-19-1 NMSA 1978’, an increase in the penalty amount which exceeds the penalties authorized in § 31-19-1 may lead to challenges regarding the classification of trespassing violations as misdemeanors. In addition, § 31-19-1 does not include language that provides for penalties that do not fall within the maximum penalties authorized for misdemeanor convictions.

### **CONFLICT**

SB358 with SB312, Game & Fish Wildlife Changes, to the extent that SB312 amends 30-14-1, but leaves in place the monetary cap of \$1,000.

LAC/al