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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/24/2023</u>
SHORT TITLE <u>Livestock Larceny Separate Offenses</u>	BILL NUMBER <u>CS/House Bill 153/HJCS</u>
	ANALYST <u>Rabin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*¹ (dollars in thousands)

	FY27	FY34	FY41	15 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$13.3	\$39.3 to \$199.4	\$39.3 to \$250.8	\$564 to \$2,582.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with Senate Bill 199

Sources of Information

LFC Files

Responses Received From

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received. Responding agencies listed below provided analysis for original bill.

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)
- New Mexico Attorney General (NMAG)
- Livestock Board (NMLB)
- Sentencing Commission (NMSC)
- Corrections Department (NMCD)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Substitute for House Bill 153

The House Judiciary Committee Substitute for House Bill 153 amends the crime of larceny as it

¹ Because this bill would effectively increase the sentence for an existing crime, many of the fiscal impacts will not be felt for several years, and the full fiscal impact will not be felt until FY32. This table provides an estimated impact over 15 years to more effectively convey the actual costs of the proposal.

relates to livestock, providing graduated penalties based on the value of the livestock stolen, as outlined in the table below. Notably, livestock valued over \$20 thousand may be charged as separate offenses if multiple livestock are stolen, but may only be charged up to three times for each occurrence. Under current law, the theft of any value of livestock is a third-degree felony, and a single occurrence constitutes one crime, even if multiple animals are stolen.

Aggregate Value of Livestock	Penalty	Basic Sentence
Up to \$2,500	Third-degree felony	Up to three years in prison and a possible fine of up to \$5,000
Between \$2,500 and \$20,000	Second-degree felony	Up to nine years in prison and a possible fine of up to \$10 thousand
More than \$20,000	Up to three separate second-degree felonies	Up to 27 years in prison and a possible fine of up to \$30 thousand

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have 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. HB153 would cumulatively increase the penalty for the existing crime of livestock theft when more than one livestock animal is stolen, effectively increasing the sentence in any case involving more than one animal. Longer sentences could result in fewer releases relative to admissions, driving up overall populations. HB153 could increase the number of incarcerated individuals and increase the time they spend incarcerated.

The changes proposed by HB153 would allow individuals who can currently only be charged with one third-degree felony, which carries a three-year prison sentence, to instead be charged with one second-degree felony (carrying a sentence of nine years in prison) if the value of merchandise stolen is valued at between \$2,500 and \$20 thousand, and up to three second-degree felonies (each carrying a sentence of up to nine years in prison) if the value of the livestock stolen is greater than \$20 thousand. Because this bill does not change the penalty for theft of livestock under \$2,500, which remains a third-degree felony, those changes are not anticipated to impact overall prison populations.

The Sentencing Commission (NMSC) estimates the average length of time served by offenders released from prison in FY21 whose highest charge was for a second-degree felony was almost four years. Based on the marginal cost of each additional inmate in New Mexico’s prison system, each offender sentenced to serve additional prison time for a second-degree felony under this proposed bill could result in estimated increased costs of \$39.3 thousand to NMCD. Each offender who served sentences for three second-degree felony terms consecutively would serve almost 12 additional years in prison, costing the state \$250.8 thousand each (this assumes these sentences would be served consecutively because there would otherwise be no effective difference between the penalty for larceny of livestock under \$20 thousand and above \$20 thousand).

However, the existing crime of larceny of livestock has resulted in very few prison admissions over the past two decades. NMSC reports between 2004 and 2013, three individuals were admitted to prison with this being their most serious charge, and none have been admitted since 2013. Indeed, fewer than 20 counts of this crime have been disposed in the last five years, and most have been dismissed. Given how rarely individuals are sent to prison for the existing crime, this analysis estimates a low-end estimate of one person being admitted to prison each year for one additional second-degree felony term and a high-end estimate of one person being admitted each year for three additional second-degree felony terms, each served consecutively.

Because HB153 effectively 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 current law. Under current law, offenders serve an average of 912 days, and as a result, offenders admitted to prison in FY25 under HB153 would not begin to impact costs until FY27. As more people are admitted to prison, costs increase. On the low end, these additional costs will begin to be realized in FY27 and will be fully realized in FY28 at a cost of \$39.3 thousand annually for that year and future fiscal years. On the high end, these additional costs will begin to be realized in FY27 and will be fully realized in FY36 at a cost of \$250.8 thousand annually for that year and future fiscal years.

This bill effectively increases sentences for acts that are already criminalized. This analysis does not include potential benefits of crime deterrence due to increased punishment because 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.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis, but could be moderate.

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. 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. Given how rarely individuals have been convicted or sent to prison for the existing crime, more effective enforcement and prosecution of the existing offense would likely have a substantially greater deterrent effect than allowing the crime to be charged multiple times for the same incident.

In its analysis of the introduced bill, the Administrative Office of the Courts provided background on relevant issues:

In early October of 2022, the New Mexico Supreme Court ruled in *State v. Torres*, No. S-1-SC-38484 (<https://caselaw.findlaw.com/nm-supreme-court/1920870.html>), that under the state law prohibiting livestock larceny, Section 30-16-1(G) NMSA 1978, livestock theft is to be prosecuted for each occurrence of theft rather than a separate charge for each animal allegedly stolen.

According to an October 3rd 2022 news release from the Administrative Office of the Courts,

To reach its decision, the Court analyzed the wording of the statute, the legislative purpose of the law, the severity and length of punishments provided for under the current statute, and reviewed the legislative history of laws against livestock theft since New Mexico’s territorial days.

The justices rejected arguments by the state that defendants should face one charge for each head of livestock stolen. The law “contemplates prosecution for the theft of anywhere from a single animal to an entire herd,” the Court reasoned.

“Specifically, the word livestock, which is neither singular nor plural, suggests that the Legislature did not contemplate a unit of prosecution based on the count or number of animals stolen in a single episode of theft,” the Court wrote. “The language of the livestock larceny statute supports this reading. The statute punishes the larceny of livestock as ‘a third degree felony regardless of its value.’ Section 30-16-1(G) (emphasis added). This contrasts with the portion of the larceny statute addressing the theft of generic property, which provides for ‘gradations of punishment based on the monetary value of the property.’”

Theft of property over \$20,000 is punished as a second-degree felony, the Court noted, while theft of property valued at \$250 or less is a petty misdemeanor.

CONFLICT

HB153 conflicts with Senate Bill 199, which amends the crime of larceny to change the unit of prosecution for livestock theft (a third-degree felony, punishable by up to three years in prison), making every stolen animal a separate larceny offense.

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