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FISCAL IMPACT REPORT

SPONSOR <u>Reeb/Rehm</u>	LAST UPDATED _____
	ORIGINAL DATE <u>2/3/2023</u>
SHORT TITLE <u>Aggravated Battery on Peace Officer Penalty</u>	BILL NUMBER <u>House Bill 155</u>
	ANALYST <u>Rabin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$12.2	\$65.4	\$117.4	\$195.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

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

SUMMARY

Synopsis of House Bill 155

House Bill 155 (HB155) increases the penalty for aggravated battery upon a police officer inflicting great bodily harm, with a deadly weapon, or in any manner whereby great bodily harm or death can be inflicted from a third-degree felony to a second-degree felony.

The effective date of this bill is July 1, 2023.

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 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. The Corrections Department (NMCD) reports the average cost to

incarcerate a single inmate in FY22 was \$54.9 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 \$26.6 thousand per year across all facilities. HB155 is anticipated to increase the time individuals spend incarcerated for this crime.

Because HB155 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 serve 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 FY25 under HB155 would begin to impact costs in FY26, when they remain in prison serving the 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 HB155.

Based on the number of individuals admitted to prison for this offense in FY22, this analysis estimates the changes proposed by HB155 will impact approximately two individuals annually. Based on actual time served for second-degree felonies for offenders released from prison in FY21, provided by the Sentencing Commission, these individuals will spend an additional 806 days in prison each due to the changes proposed by this bill, a cost of \$58.7 thousand per offender and \$117.4 thousand overall. These additional costs will begin to be realized in FY26, increasing over the following two years (as more individuals serve longer sentences for this crime) and leveling out at \$117.4 thousand in FY28 (as offenders begin to be released from prison) and future fiscal years.

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 HB68 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, 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.

NMSC notes the following issue:

Aggravated assault upon a peace officer is 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 HB 155 is enacted, the penalty for the lesser included offense, aggravated assault 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.

On the other hand, the office of the New Mexico Attorney General (NMAG) notes current penalties for assault on a peace officer “progress linearly and consistently based on the level of violence against a peace officer except for assault with intent to commit a violent felony on a peace officer and aggravated battery on a peace officer with great bodily harm or with a deadly weapon.” NMAG states increasing the penalty as proposed by HB155 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.”

The Public Defender Department adds:

Also, there is a multitude of ways this crime could be committed. It could be committed (1) by actually inflicting great bodily harm on the officer, or (2) using a deadly weapon even if no harm or minimal harm results, or (3) in a manner that *could* inflict great bodily harm or death (but does not). Under this proposed statute, a person who actually inflicts great bodily harm will be incarcerated for 9 years and a person who does not inflict great bodily harm would also be incarcerated for 9 years. Moreover, the term “deadly weapon” is so broadly defined by the courts that it could include anything, including your mouth or shoe. *State v. Neatherlin*, 2007-NMCA-035, ¶ 15 (stating the person’s mouth was a deadly weapon because they had hepatitis C; *State v. Nick R.*, 2009-NMSC-050, ¶ 40 (recognizing that a shoe could be considered a deadly weapon “if used offensively”); *see also*, NMSA 1978, § 30-1-12(B) (broadly defining “deadly weapon”).

Finally, the existing third degree felony sentence can already be increased if the deadly weapon used is a gun. NMSA 1978, § 31-18-16. The Habitual Offender Act, NMSA 1978, § 31-18-17, also already provides that persons convicted of a repeat felony is a habitual offender and their sentence shall be increased by one, four, or eight years depending on how many prior felony convictions they have. And if the circumstances of the offense warrant aggravation of the sentence, NMSA 1978, § 31-18-15.1 allows the court to increase the basic sentence by up to one-third.