

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

FISCAL IMPACT REPORT

SPONSOR Maestas LAST UPDATED _____
ORIGINAL DATE 2/16/2023
BILL _____
SHORT TITLE Aggregation of Embezzlement for Penalties NUMBER Senate Bill 264
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Costs to Counties	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	County General Funds

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 Senate Bill 264

Senate Bill 264 would punish all embezzlements within a one-year period as one crime, rather than treating each as a separate instance and would aggregate the value of embezzled items for the purposes of sentencing.

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 significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties could increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. 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. LFC estimates a marginal cost (the cost per each additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB264 may slightly increase the time individuals spend incarcerated.

Arrests for embezzlement and admissions to prison for that offense are very low. The Sentencing Commission reports that, in FY22, 26 people were arrested with their highest offense as embezzlement, and three people were admitted to prison with their highest offense as embezzlement, about 14 percent of those arrested. Over the four-year period between 2019 and 2022, only three people were arrested for embezzlement more than once within a single year. As a result, it is estimated just one person every 10 years would be admitted to prison for a longer period of time for committing multiple embezzlement offenses, and impacts on jail sentences would likely be similarly low. Even if an individual were admitted to prison for a second-degree felony rather than a fourth-degree felony under the provisions of this bill, this would result in increased costs of just \$19.8 thousand once per decade. Given these low costs, the fiscal impact of this bill due to incarceration costs for both prisons and jails would be minimal.

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 are also likely to be minimal. Indeed, the Administrative Office of the Courts notes the bill could lead to cost-savings for prosecutors, defense attorneys, and courts by combining what would otherwise be multiple court cases over the course of several months into fewer cases, and more serious charges may result in more defendants being referred to treatment programs.

This bill may effectively increase sentences for acts that are already criminalized. 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

The office of the New Mexico Attorney General (NMAG) notes that, while the result of multiple acts of embezzlement being charged as one offense may be intended to apply to "...multiple acts of embezzlement are part of a continuous scheme conducted with one unitary intent and directed at one victim," the effect of the bill would be to also require multiple acts of embezzlement within one year being charged as one offense "...even where the defendant's acts were directed at distinct victims and/or completely unrelated in scheme or the defendant's intent." Additional language may be necessary if that is not the intent of the bill. As written, the bill could create confusion about the proper county for filing charges and which district attorney's office should prosecute the case because it would apply to multiple acts of embezzlement within one year that took place in different counties.

Both NMAG and the Administrative Office of the District Attorneys (AODA) note potential double jeopardy concerns from this bill. AODA writes, “Prosecution for other property embezzled within the twelve-month period, but discovered after conviction or acquittal, may be precluded by this bill on double jeopardy grounds.”

The Public Defender Department (PDD) notes SB264’s cap of penalties at a second-degree felony would preclude multiple second-degree felonies being charged in some cases. PDD writes this “seems appropriate for a non-violent offense already subject to restitution, the best method for addressing the actual harm suffered in financial crimes.” Further, PDD explains the bill is “consistent with the ‘single larceny doctrine’ where embezzlement is typically committed as a ‘course of conduct’ offense, making its charging more consistent with other property crimes.”

TECHNICAL ISSUES

AODA suggests language in Subsections B, C, D, E, and F stating “Whoever commits embezzlement when the value of the thing embezzled...” be changed to “Whoever commits embezzlement when the combined value of the thing or things...” Alternatively, AODA suggest “thing” be replaced with the word “property.”

ER/al/hg