

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date 4 February 2025
Bill No: HB 103-280

Sponsor: Andrea Reeb & Nicole Chavez
Battery on a Peace Officer
Penalty

Agency Name and Code Number: 280 Law Offices of the Public Defender [LOPD]

Person Writing: Kate Baldrige
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Short Title: _____

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **HB 104, Crimes Against Peace Officers**

Definitions

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 103 is identical to HB 155 introduced in the 2023 legislative session. It seeks to amend NMSA 1978, § 30-22-25(C) (1971) “Aggravated Battery Upon a Peace Officer” (with great bodily harm *or* a with deadly weapon *or* in a manner that could cause great bodily harm or death) to enhance the punishment from a third degree felony (three years) to a second degree felony (nine years).

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

Because this bill increases the punishment from a third to second degree felony, which *triples* the current sentence of 3 years’ incarceration, there will be an increased need for more experienced attorneys to handle these cases and significantly increase the likelihood such cases would be taken to trial and appealed upon conviction. If more trials result, LOPD may need to hire more trial attorneys with greater experience.

Accurate prediction of the fiscal impact would be impossible to speculate. If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Assessment of the impact would be necessary after the implementation of the proposed legislation, but such is likely to result in a requirement for additional funds to LOPD in order to provide constitutionally required effective assistance of counsel.

Presumably the courts and DAs would be affected in similar measure to LOPD, and given the

increase in sentence, the proposed legislation would also have a fiscal impact on DOC because the offender would be incarcerated for six additional years.

SIGNIFICANT ISSUES

Charges for battery on a peace officer most often arise during arrests for other crimes, so generally, the punishment for the entire episode would already be more than 3 years. Regardless, it is well-established that incarceration in general is not a deterrent to committing a crime, and even the death penalty has not been proven to deter criminal activity. In fact, more time behind bars can increase the likelihood that someone will commit another crime in the future. *See* Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, JSTOR Daily (July 18, 2022) <https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/#:~:text=In%202021%2C%20a%20much%20larger,that%20didn't%20involve%20imprisonment.>

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, when the entire sentencing scheme is viewed as a whole, it becomes clear that the increased penalty is not necessary, as there are numerous sentencing options available to address more egregious conduct. First, the existing third degree felony sentence can already be increased with a firearm enhancement if the deadly weapon used is a gun. *See* 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. Finally, this is a crime that a judge can designate as a “serious violent offense” if supported by the circumstances, which drastically limits a prisoner’s ability to earn meritorious deductions of their sentence (“good time”) ensuring they serve at least 85% of the total sentence imposed.

Prosecutors and judges already have ample tools in their toolbox to ensure that more violent batteries receive greater penalties, and the less serious batteries are not punished as harshly. This legislation runs the risk of painting all batteries with one brush.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 104, Crimes Against Peace Officers Definitions.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None because enhance penalties already exist per statute.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The conduct which is already criminalized will continue to be punished at existing levels. Prosecutors and judges would retain the ability to increase the sentence as outlined above.

AMENDMENTS

None at this time.