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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/25/15

SPONSOR HSCAC LAST UPDATED \_\_\_\_\_ HB 195/HSCACS

SHORT TITLE Weapons of Mass Destruction SB \_\_\_\_\_

ANALYST Chenier

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates Senate Public Affairs Committee Substitute to Senate Bill 180

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Homeland Security and Emergency Management (DHSEM)

Department of Public Safety (DPS)

Attorney General’s Office (AGO)

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of HSCAC Substitute

The House Safety and Civil Affairs Committee Substitute for HB 195 amends the Explosives Act, Sections 30-7-17 through 30-7-22 NMSA 1978, to rename it the “Weapons of Mass Destruction and Explosives Act.” The substitute bill amends and enacts statutory sections within the renamed Act to provide felony penalties for specified acts, as follows:

#### **I. First Degree Felony For Use of a Weapon of Mass Destruction Resulting in the Death of a Person**

- **Section 5(B)** (new material): knowingly and intentionally using against another person a weapon of mass destruction and causing the death of a person.

#### **II. First Degree Felony**

- **Section 5(E)** (new material): using, without lawful authority, recombinant technology or any other scientific technology to create new pathogens or more virulent forms of

existing pathogens for the purpose of creating a weapon of mass destruction.

### III. Second Degree Felony

- **Section 5(A)** (new material): knowingly and without lawful authority possesses, develops, manufactures, produces or transfers any weapon of mass destruction.
- **Section 5(C)** (new material): knowingly and intentionally using against another person a weapon of mass destruction and causing great bodily harm to a person.

### IV. Third Degree Felony

- **Section 5(D)** (new material): knowingly and intentionally using a weapon of mass destruction against property with the intent to cause widespread and substantial damage to that property.

### V. Fourth Degree Felony

- **Section 30-7-20:** Intentionally giving, mailing or sending or causing to be sent a false or facsimile weapon of mass destruction to another person or placing at any location a false or facsimile weapon of mass destruction, with the intent that any other person thinks it is a real weapon of mass destruction.
- **Section 30-7-21:** Knowingly conveying or causing to be conveyed to any police agency of fire department a false report concerning the placement of any weapon of mass destruction, which false report causes death or great bodily harm to another person. If death or great bodily harm not caused, a misdemeanor.

The Substitute for HB 195 defines “weapon of mass destruction” to mean a chemical warfare agent, weaponized biological warfare agent, nuclear agent or radiological agent. The bill defines the following additional terms: “chemical warfare agent”; “nuclear agent”; “radiological agent”; “vector”; “weaponized”; and “weaponized biological warfare agent.”

## FISCAL IMPLICATIONS

This substitute removes the life sentence penalties contained in the original bill from the newly created crimes, which will reduce the impact of the bill on the NMCD in the longer run (because of a lack of 30 year sentences). However, the substitute continues to create several new felony crimes—a fourth degree felony, a third degree felony, two second degree felonies, and two first degree felonies. It also creates a new misdemeanor crime.

With new crimes and subsequent punishments this bill could result in an increase of incarcerated individuals at NMCD facilities. There is no estimate of how many individuals would be incarcerated under this bill if enacted; however, the average cost to incarcerate inmates is \$100.83 per day or \$36.8 thousand per year.

AOC stated that “It should be noted that the imposition of severe penalties, will inspire defendants to retain attorneys and demand jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees.”

## SIGNIFICANT ISSUES

The original HB 195 amended Section 31-18-15 NMSA 1978 to provide for a life sentence and a fine of \$17,500 or less for a first degree felony for use of a weapon of mass destruction resulting

in the death of a person. The substitute does not amend Section 31-18-15 to provide this penalty, despite Section 5(B) providing for the imposition of the penalty.

DHSEM provided the following:

DHSEM, in partnership with DPS, Department of Energy and the National Nuclear Detection Office, led strategy and planning sessions throughout most of 2014. The effort resulted in a new nuclear detection program, to better protect our citizens and the nation from radiological and nuclear terrorism. During the strategy and planning sessions, involved agencies recognized the need for legislation that would further support the essential goal of protecting the citizens of New Mexico and provide law enforcement with the necessary legal framework to address threats.

AGO provided the following:

There is existing federal law that deals with weapons of mass destruction and is broader in scope. Most, if not all, weapons of mass destruction are highly classified matters of national security and are typically handled by the United States Attorney's Office. Since it is a matter of national security, the attorneys handling such cases have to have extremely high levels of security clearance. Most prosecutors at the State level do not hold those security clearances and would be unable to actually enforce the Act in a court of law.

AODA provided the following:

Although some of the actions described under the bill involving harm to persons or property may be prosecuted under existing law, much of the conduct prohibited under the bill would be difficult or impossible to prosecute under existing law. The federal government and many states have therefore enacted laws specifically addressing weapons of mass destruction. The federal law will only apply in situations in which the federal courts have jurisdiction, such as the use of interstate commerce. And the states are free to enact their own laws on the subject of weapons of mass destruction.

PDD stated that “the Act defines “chemical warfare agent” so broadly as to potentially include virtually any weapon, so that the Act could impose terrorist-level penalties to crimes already routinely handled by the existing law in New Mexico.”

EC/bb/je