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FISCAL IMPACT REPORT

SPONSOR <u>HJC</u>	LAST UPDATED <u>3/15/2023</u>
	ORIGINAL DATE <u>2/28/2023</u>
SHORT TITLE <u>Robbery & Organized Retail Crime</u>	BILL NUMBER <u>CS/House Bill 234/HJCS/aSJC</u>
	ANALYST <u>Rabin</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	At least \$221.5	At least \$462.8	At least \$556.8	At least \$1,241.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Conflicts with House Bill 55

Sources of Information

LFC Files

Responses Received From

Because of the short timeframe between this bill's most recent amendment and its hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

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 SJC Amendment to SJC Substitute for House Bill 234

The Senate Judiciary Committee amendment to the House Judiciary Committee substitute for House Bill 234 amends the new crime of aggravated shoplifting, a third-degree felony. Under the original bill, aggravated shoplifting consists of unlawfully assaulting or striking at a person with a deadly weapon either (1) while in the act of shoplifting, (2) while seeking to retain shoplifted merchandise, or (3) while avoiding apprehension immediately following shoplifting. The SJC amendment removes the first and third components, amends the second component to only apply

immediately after shoplifting, and adds a new third component “to effect an escape from the scene of an act of shoplifting,” which must also occur immediately after shoplifting.

Per the amended definition, aggravated shoplifting “consists of unlawfully assaulting or striking at another with a deadly weapon while in the act of shoplifting, while seeking to retain shoplifted merchandise or while avoiding apprehension immediately following shoplifting.”

This amendment does not substantively alter the prior analysis.

Synopsis of HJC Substitute for House Bill 234

The House Judiciary Committee substitute for House Bill 234 amends the crime of shoplifting to provide for aggregation of the value of merchandise shoplifted under certain circumstances for the purposes of assessing penalties, creates the new crime of aggravated shoplifting (a third-degree felony, carrying a basic sentence of three years in prison) and creates the new crime of organized retail crime (a second-degree felony, carrying a basic sentence of nine years in prison).

The existing crime of shoplifting provides for the following penalties:

Value of Merchandise	Penalty	Basic Sentence
\$250 or less	Petty misdemeanor	Less than six months in jail and/or a fine up to \$500
Between \$250 and \$500	Misdemeanor	Less than one year in jail and/or a fine of up to \$1,000
Between \$500 and \$2,500	Fourth-degree felony	Up to 18 months in prison and a possible fine of up to \$5,000
Between \$2,500 and \$20,000	Third-degree felony	Up to three years in prison and a possible fine of up to \$5,000
More than \$20,000	Second-degree felony	Up to nine years in prison and a possible fine of up to \$10 thousand

HB234 does not alter this penalty structure, but it does require the value of merchandise to be aggregated for purposes of determining penalties for a single instance of shoplifting from a single retailer at a single location, although this does not seem to differ in effect from provisions in current law stating limiting shoplifting charges to the value of merchandise stolen in a single incident. If an individual has engaged in multiple instances of shoplifting at one or more retailers within a 90-day period, HB234 provides that the prosecution may charge that individual either with multiple charges based on individual incidents at individual retailers *or* with a single charge based on the aggregated market value of merchandise shoplifted from multiple retailers within the 90-day period. The bill provides that venue for prosecutions based on an aggregated value of merchandise stolen is proper in any county in which merchandise was shoplifted, and precludes an individual from being punished for both shoplifting and organized retail crime, although they may be charged with both violations.

HB234 further creates the new crime of aggravated shoplifting, a third-degree felony, which consists of unlawfully assaulting or striking at another with a deadly weapon while in the act of shoplifting, while seeking to retain shoplifted merchandise, or while avoiding apprehension immediately following shoplifting.

The new crime of organized retail crime is defined as any of the following:

- Acting in concert with another person(s) to steal merchandise with an aggregated retail value of at least \$2,500 from one or more retailers over the span of one year, with the intent to sell, exchange, or return the merchandise for value;
- Acting in concert with another person(s) to receive, purchase, or possess merchandise with an aggregated retail market value of at least \$2,500 over the span of one year with the knowledge or belief that the merchandise was stolen;
- Acting as an agent of another individual or group to steal merchandise with an aggregated retail value of at least \$2,500 over the span of one year as part of an organized plan to commit theft; or
- Recruiting, coordinating, organizing, supervising, directing, managing, or financing another to undertake any of the above or any other theft.

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 will likely 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. HB234 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates HB234 will result in increased annual incarceration costs of at least \$556.8 thousand to the state. Costs to the state are estimated to be at least \$221.5 thousand in FY25 and will rise over the next two years to reach \$556.8 thousand in FY27 and future fiscal years. Without additional available data, the analysis estimates the new crime of aggravated shoplifting will result in at least one additional person being admitted to prison for that third-degree felony each year. Based on arrest data provided by the Sentencing Commission and case disposition data, it is estimated 22 people will be incarcerated at a higher level for multiple instances of shoplifting within a 90-day period each year, and 10 people will be incarcerated for the new crime of organized retail crime each year.

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.

The provisions of this bill effectively increase sentences for some 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

Public Safety Impacts. Many provisions of HB234 deal with conduct that is already criminalized, effectively creating additional penalties for some instances of this conduct. 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.

Legal Discussion. The office of the New Mexico Attorney General writes the following:

By removing the expanded language from the robbery statute in original HB234 and instead creating a new offense of Aggravated Shoplifting, there are fewer implications on juvenile offenders. Robbery is an enumerated offense under the statutory definition of 'youthful offender' in Section 32A-2-3), and thus juveniles convicted of Robbery may face adult sentences. Aggravated Shoplifting – as it is a new statutory criminal offense – is not currently an enumerated offense under the definition of 'youthful offender,' and thus a conviction for Aggravated Shoplifting would *not* lead to the possibility of an adult sentence.

The Public Defender Department (PDD) notes the crime of aggravated shoplifting could be subject to firearm enhancements and habitual offender enhancements and, if a battery resulted, that battery could be charged separately.

CONFLICT

Conflicts with House Bill 55, which establishes a different definition of organized retail crime.

TECHNICAL ISSUES

PDD notes the drafting of the bill is unclear in the provisions related to aggregating value, as it does not specifically state that a single *incident* of shoplifting must be charged as one single offense based on aggregated value, and prosecutors may choose between charging multiple incidents within 90 days as multiple offenses based on the value shoplifted in each incident *or* a single offense based on the aggregate value shoplifted across all the incidents.

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