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## FISCAL IMPACT REPORT

SPONSOR Maestas LAST UPDATED \_\_\_\_\_  
ORIGINAL DATE 3/6/23  
BILL  
SHORT TITLE Voluntary Manslaughter Exclusions NUMBER Senate Bill 363  
ANALYST Daly

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

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	\$13.3	\$39.3	\$52.6	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Department of Public Safety (DPS)

Law Offices of the Public Defender (LOPD)

New Mexico Attorney General (NMAG)

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC)

## SUMMARY

### Synopsis of Senate Bill 363

Senate Bill 363 amends the voluntary manslaughter statute. Manslaughter is the unlawful killing of a human being without malice. Voluntary manslaughter is manslaughter committed upon a sudden quarrel or in the heat of passion. SB363 excludes from voluntary manslaughter a killing committed in the course of or during an escape from the commission of a felony or while resisting a lawful arrest by a law enforcement officer or another person.

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 moderate fiscal impacts. Although this bill creates no new crimes, the

intended 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. SB363 is anticipated to increase the time incarcerated individuals spend incarcerated.

Overall, assuming one person's conviction and sentence is increased from a third degree felony (average length of stay about four years) to a second degree felony (average length of stay about 5.5 years), resulting in an increase in the average length of stay of almost 1.5 years, this analysis estimates SB363 will result in increased annual incarceration costs of \$13.3 thousand to the state beginning in FY27. The bill's full cost impacts will not be felt until FY28. Costs to the state are estimated to be at least \$13.3 thousand in FY27 and will rise to \$39.3 thousand in FY28 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 expanded crimes under SB363 are not included in this analysis, but could have some impact.

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**

Changes to the crime of voluntary manslaughter proposed by this bill increase penalties for the existing crime. 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 2<sup>nd</sup> 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.

As to the particulars of SB363, NMAG explains, voluntary manslaughter is:

A less serious offense than first- or second-degree murder. A defendant who cannot establish that he killed lawfully in self-defense may argue that he should only be convicted of voluntary manslaughter under an “imperfect self-defense” theory by claiming that the victim’s actions provoked such an intense emotion that the resulting homicide was less culpable. *State v. Abeyta*, 1995-NMSC-051, ¶ 17, 120 N.M. 233, *abrogated on other grounds by State v. Campos*, 1996-NMSC-043, ¶ 17, 122 N.M. 148.

According to NMAG, HB363 would prevent such an argument when the killing occurs in the course of or during an escape from the commission of a felony or while resisting a lawful arrest. As LOPD points out, however, if the intent of the bill is to exclude this conduct from manslaughter and instead *require* that conduct be charged as murder, New Mexico already defines killing “in the commission of or attempting to commit any felony” as first degree murder. Section 30-2-1(a)(2) NMSA 1978. This crime is known as felony murder. As LOPD notes, whether a person escaping is still “in the commission” of a felony appears to be unclear in New Mexico law. Amending the felony murder statute to include flight from any felony might address this issue more directly. Further, LOPD advises that:

In New Mexico, the law already prevents a ‘first aggressor’ (for example, someone committing a dangerous felony) from claiming self-defense (either ‘perfect’ or ‘imperfect’). It is “well established in this jurisdiction that a defendant who provokes an encounter, as a result of which he finds it necessary to use deadly force to defend himself, is guilty of an unlawful homicide and cannot avail himself of the claim that he was acting in self-defense.” *State v. Deleon*, unpublished, S-1-SC-34808, ¶ 33 (NM S. Ct. 2017).

However, LOPD goes on to advise, if self-defense is not a grounds for outright acquittal, under well-established law in New Mexico, the fact that a person acted out of fear for the person’s own life can reduce a homicide charge from murder to manslaughter. That agency warns that altering the existing law of self-defense likely would be litigated as unconstitutional. See New Mexico Constitution, Art. II sec. 4.

Additionally, NMAG advises that even with SB363’s revisions, juries in many cases might still be instructed on manslaughter because the jury would need to resolve the question of whether, for example, the homicide occurred in the course of committing another crime.

## OTHER SUBSTANTIVE ISSUES

According to the LOPD, this bill has been referred to as to “Tyler Lackey Memorial Bill” in reference to a recent murder case. NMAG provides this summary of the case:

In *State v. Chavez*, 2022-NMCA-007, 504 P.3d 541, Matthew Chavez attempted to rob Tyler Lackey at an ATM. Lackey drew his gun and turned the tables on Chavez, who retreated to his nearby car. Lackey held Chavez at gunpoint, apparently trying to conduct a citizen’s arrest. Chavez drew his gun, shot Lackey twice, and sped off. The jury convicted Chavez of second-degree murder. The Court of Appeals reversed, holding that the district court should have instructed the jury on voluntary manslaughter under an imperfect self-defense theory. It found that a reasonable jury could have concluded that Lackey’s response sufficiently provoked Chavez such that the homicide was manslaughter instead of murder. *Id.* ¶ 26. Judge Hanisee, in his concurring opinion, specifically urged the Supreme Court or Legislature to

address this issue. *Id.* ¶ 52. The Supreme Court initially granted certiorari, but then quashed it, leaving the Court of Appeals’ decision intact.

NMAG suggests that:

SB363 would change the definition of voluntary manslaughter to address cases like *Chavez*. It would clarify that “a sudden quarrel or heat of passion” does not include any conduct occurring during the commission of or attempt to escape from the commission of a felony. It also could not include conduct that occurred while resisting a lawful arrest. Under the bill, the jury would likely not have found that Chavez committed voluntary manslaughter because he killed Lackey either: (1) in the course of attempting to rob him, (2) while trying to flee after attempting to rob him, or (3) while resisting a lawful citizen’s arrest.

## ALTERNATIVES

LOPD recommends amending the felony-murder statute at Section 30-2-1(A)(2) to include the phrase “or flight from” (so that it reads “murder in the first degree may be caused...in the commission of, attempt to commit or flight from any felony”) as a more direct method of addressing the apparent intent of this bill.

NMAG recommends another approach, explaining:

An initial aggressor cannot claim that he acted in self-defense unless the victim responded with unreasonable force or he tried to stop the fight but the victim continued it. UJI 14-5191 and -5191A. SB363, together with *State v. Gaitan*, 2002-NMSC-007, 141 N.M. 758, would create something like an initial aggressor rule for imperfect self-defense. But the precise contours of the rules would be somewhat different, requiring separate jury instructions and legal analysis. The Legislature could unify the areas of law by providing that acting upon a sudden quarrel or in the heat of passion does not include circumstances in which the defendant was the initial aggressor.

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