

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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**     X  **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date**     1/17/23   
**Bill No:**     HB 56-280

**Sponsor:**    Cathrynn N. Brown, Randall T. Pettigrew, Harlan Vincint  
**Short Title:**    Clarifying Crime of Trespass

**Agency Name and Code Number:**    Law Offices of the Public Defender - 280  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 56 would remove gendered language from the existing statutes, alter the language that defines the elements of the existing crime of criminal trespass, and increase the penalty for some criminalized conduct to the level of a fourth degree felony, specifically:

HB 56 would amend NMSA 1978, Sections 30-14-1(A) through (C), which define the conduct that constitutes criminal trespass, to removed gendered language and to attempt to define the elements of the crime more clearly.

HB 56 would amend Section 30-14-1(D) to removed gendered language.

HB 56 would amend Section 30-14-1(E) to removed gendered language and to increase the level of punishment for criminal trespass to make it a fourth degree felony.

HB 56 would also amend Section 40-14-1(F) to removed gendered language and to increase the level of punishment for knowingly removing, tampering with, or destroying a *no trespass* sign to make it a fourth degree felony if the resulting damage is to the sign is greater than \$1000.

HB 56 would amend NMSA 1978, Section 30-14-1.1(A), to increase the level of punishment for one type of trespass to make it a fourth degree felony; however, it would keep the punishment for the other two identified types of trespass at the misdemeanor level.

HB 56 would also amend Section 30-14-1.1(D) to remove gendered language.

**FISCAL IMPLICATIONS**

Felonies carry significant collateral consequences that misdemeanors do not. As a result, increasing the penalty for trespass to a felony could result in a greater number of defendants choosing to exercise their right to a jury trial, rather than resolving their case by a plea agreement. This increase in trials could be absorbed by current staffing levels, but where the Law Offices of the Public Defender [*hereinafter* LOPD] already has caseloads so high in some districts that offices must refuse to accept additional cases, this penalty increase could end up having a more significant fiscal impact depending on how often it is prosecuted.

LOPD does not control the decision to charge persons with crimes. Nor does LOPD control the number of resultant cases that are assigned to LOPD, as indigent criminal defense is a constitutionally mandated right. That said, since HB 56 does not appear to substantively alter the conduct that currently constitutes the crime of criminal trespass, there may not be a significant increase in the number of cases that result. Based on such an assumption, amending the definitional language, as proposed, may not have a significant impact on performance.

However, the same cannot necessarily be said for the proposed amendments that increase the level of punishment for committing certain trespasses. Generally, the enactment of any higher criminal penalty has a tendency to result in more trials, as more defendants are likely prefer risking a trial rather than take a plea to the greater penalty. If there is a significant increase in higher-penalty trials as a result of enacting HB 56, LOPD may need to hire additional trial attorneys with greater experience to address the increase in trials so as to ensure compliance with constitutional mandates, including the effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.)

These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), or higher. A mid-level felony capable 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. A senior-level Trial attorney's mid-point salary including benefits is \$149, 063.13 in Albuquerque/Santa Fe and \$157, 552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12, 780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126, 722.33.

At this time, only such speculation is possible. An assessment would be necessary after implementing the proposed higher-penalty scheme, to more accurately determine the actual impact and performance implications on the existing, limited resources.

## **SIGNIFICANT ISSUES**

Currently the law recognizes a crucial distinction between trespass (on open lands) and burglary (into a structure with personal privacy interests). *See State v. Archuleta*, 2015-NMCA-037, 346 P.3d 390. Where burglary involves a more intrusive entry without permission than trespass, it is punished as a felony; this bill would erode that distinction, undercutting many decades of well-established law.

## **PERFORMANCE IMPLICATIONS**

LOPD would also note that, although increased punishment seems to be one of the preferred methods to attempt to deter damaging and unwanted behavior, in general, decades of empirical study on the effects of increased punishment as a method of deterrence have not resulted in conclusive evidence that increased punishment actually produces the desired result of deterring such conduct. Thus, the increased drain on limited resources and performance capabilities could result in a negative impact while not successfully producing the desired effect envisioned by HB 56.

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, and analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

The proposed amendments to Sections 30-14-1 attempt to remove gendered terminology and more clearly state each definition and the applicable punishments. Analyst notes, however, that the proposed language does not substantively alter the existing elements of criminal trespass and whether the proposed language is actually more clear is not readily apparent from the language itself. As such, the amendments may produce the opposite of the desired effect.

HB 56 does not propose to increase the penalty for two types of trespass specified in Sections 30-14-1.1(B) and (C), although HB 56 proposes to increase the penalty for the type of trespass specified in Section 30-14-1.1(A). Analyst notes that, as drafted, there may be a possibility that a person would be subject to prosecution for a fourth degree felony pursuant to Section 30-14-1 and prosecution for a misdemeanor pursuant to Sections 30-14-1.1 for the same conduct.

## **OTHER SUBSTANTIVE ISSUES**

### **ALTERNATIVES**

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

### **AMENDMENTS**