

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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

Date 1-17-2024

Bill No: HB 61-280

Agency Name and Code LOPD-280
Number: _____

Sponsor: Andrea Reeb
Short Title: Aggravated Battery on a Peace Officer Penalty

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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
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None known.
Duplicates/Relates to Appropriation in the General Appropriation Act: None known.

SECTION III: NARRATIVE

BILL SUMMARY

HB 61 is identical or substantially similar to prior proposed bill: 2023 HB 155.

Synopsis: HB 61 would increase the penalty for aggravated battery upon a peace officer (NMSA 1978, § 30-22-25), which is battery committed with intent to injury and where the peace officer suffers great bodily harm, or when the battery is accomplished using a deadly weapon, or in any manner where great bodily harm or death can be inflicted. Under the current statute, this constitutes a third-degree felony (three years), the same penalty as for an aggravated battery committed against any victim. The bill proposes to increase the penalty to that of a second-degree felony (nine years) when the victim is a peace officer.

FISCAL IMPLICATIONS

Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. 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. However, an entry-level Assistant Trial Attorney's mid-point salary *including benefits* is \$121,723.30 in Albuquerque/Santa Fe and \$130,212.59 in the outlying areas (due to salary differential required to maintain qualified employees). 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.

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 (including whatever the person was being arrested for) would already be more than 3 years. 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. *See Five Things About Deterrence*, NAT'L INST. OF JUSTICE (May 2016) <https://www.ojp.gov/pdffiles1/nij/247350.pdf>. In reality, 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.>

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”).

The existing third-degree felony sentence can already be increased if the deadly weapon used is a gun. 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.

Importantly, there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. This is especially true for crimes that are reactive to another’s actions and/or committed in the heat of passion, as this particular crime almost always is. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

PERFORMANCE IMPLICATIONS

See Fiscal Implications.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

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 that it has been drawn pursuant to a special message of the Governor.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None because enhanced 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.