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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 1/30/2024

SPONSOR Muñoz/Padilla

BILL
NUMBER Senate Bill 195

SHORT TITLE Felony Entering Retail Establishments

ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to state (NMCD)	No fiscal impact	Up to \$6.11	Up to \$32.70	Up to \$38.81	Recurring	General Fund
Costs to counties	No fiscal impact	Up to \$19.2	Up to \$28.8	Up to \$48.0	Recurring	See Fiscal Implications
Total	No fiscal impact	Up to \$25.31	Up to \$61.5	Up to \$86.81	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

Office of the Attorney General (NMAG)

New Mexico Sentencing Commission (NMSC)

Agency Analysis was Solicited but Not Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Public Defender Department (PDD)

Corrections Department (NMCD)

Department of Public Safety (DPS)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has received little analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of Senate Bill 195

Senate Bill 195 seeks to revise the current burglary statute, specifically targeting retail establishments. It proposes that entering a retail establishment after being explicitly prohibited from doing so, with the intention of committing theft or any felony, shall constitute a fourth-degree felony. This amendment focuses on enhancing legal consequences for unauthorized entry into retail spaces with criminal intent, thereby addressing concerns specific to retail

establishments.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

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 additional inmate) of \$19.2 thousand per county jail inmate per year, based on incarceration costs at the Metropolitan Detention Center. SB195 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated.

Overall, this analysis estimates Senate Bill 195 will result in additional incarceration costs of up to \$86.81 thousand per year, per individual charged under the revised statute. Based on the costs to incarcerate a single inmate at both NMCD and county jails. This analysis estimates the changes proposed by SB195 based on the costs of incarcerating at least one additional person annually.

Based on estimates of actual time served for fourth-degree felonies provided by the Sentencing Commission, an individual would spend an additional 236 days in prison each due to the increased penalty, at a cost of up to \$26.6 thousand per offender. These additional costs will begin to be realized in FY25, increasing over the following three years (as more individuals serve longer sentences for fourth-degree felonies and leveling out at up to \$86.81 thousand per offender in FY27 (as offenders begin to be released from prison) and future fiscal years.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than the severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Prioritizing solving crimes and securing convictions, particularly for serious offenses, could have more impact. 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. 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.

The analysis received from the New Mexico Sentencing Commission and the Office of the Attorney General raised concerns about Senate Bill 195's necessity and clarity. They highlight that the existing statute might already encompass unauthorized entry into retail establishments with criminal intent. The bill's lack of clear definitions for "notice" and "retail establishment" could lead to interpretational challenges. Additionally, there is uncertainty about the bill's impact on the state's prison population and associated costs. The proposed statute's alignment with current legal interpretations, particularly in relation to no-trespass orders, also raises questions.

TECHNICAL ISSUES

Analysis from the Office of the Attorney General stated:

While it is likely that “retail establishment” is to be given its ordinary meaning, a definition may be useful. For example, see the definition of “retailer” under NMSA 1978 Section 30-16-20.1(D)(2):

“Retailer” means a person or business that sells or facilitates the sale of merchandise to the public for use or consumption rather than for resale.””

SS/rl/hg