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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/1/24

SPONSOR Little/Gurrola

BILL
NUMBER House Bill 183

SHORT TITLE Negligent Use of Deadly Weapons

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	At least \$26.6	Up to \$37.5	Up to \$64.1	Recurring	General Fund
Costs to counties	No fiscal impact	At least \$9.6	Up to \$19.2	Up to \$28.8	Recurring	See Fiscal Implications
Total	No fiscal impact	At least \$36.2	Up to \$56.7	Up to \$92.9	Recurring	See Fiscal Implications

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 127, House Bill 129, House Bill 46, House Bill 47, Senate Bill 69, and House Bill 58

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Law Office of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
Adult Parole Board (APB)
Sentencing Commission (NMSC)
Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Municipal League (NMML)
Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of House Bill 183

House Bill 183 (HB183) amends Section 30-7-4 NMSA, which outlines the crime of negligent use of a deadly weapon. This bill primarily seeks to escalate the penalties associated with such offenses. Under the current law, negligent use of a deadly weapon includes actions like

discharging a firearm into a building or vehicle, carrying a firearm under the influence of intoxicants or narcotics, negligently handling or using a firearm in a manner that endangers safety, or firing a weapon within 150 yards of a dwelling or building without proper authorization.

The key change proposed by HB183 is the elevation of penalties for offenses under this statute. Previously classified as a petty misdemeanor, the first offense under this amended bill will now be considered a full misdemeanor. This change translates to a harsher potential sentence for first-time offenders, extending up to one year. Moreover, for individuals committing a second or subsequent offense, the penalty becomes even more severe, rising to the level of a fourth degree felony. This could involve a base sentence of up to 18 months, potentially augmented by statutory enhancements.

Additionally, HB183 introduces modifications to ensure gender-neutral language within the statute, replacing terms like “his property” with “the person’s property” and making corresponding updates in sections referring to peace officers and public employees.

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 moderate 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. 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. HB183 is anticipated to increase the number of incarcerated individuals.

The enhanced punishment proposed in this bill turns a first offense from petty misdemeanor into a full misdemeanor, punishable by up to a year in jail; for purposes of this analysis, it is estimated an individual could spend between six months and one year incarcerated for this offense. Based on the marginal cost of each additional inmate in New Mexico’s jail system, each offender sentenced to jail for this crime could increase costs to counties by approximately \$9,600 to \$19.2 thousand. The enhanced punishment proposed in this bill for a second offense, from a petty misdemeanor to a fourth degree felony, is punishable by up to 18 months in prison. 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.

As more people are admitted to prison, costs increase. Costs continue to rise for each year until offenders admitted in the first year the change takes effect begin to leave prison. For purposes of this calculator, costs ramp up over the term of the average change in time served (for a new crime, the entirety of the average projected time served), with the first year of admissions expected to exit prison after the average change in time served.

It is difficult to estimate how many individuals will be charged, convicted, or sent to jail based on an increase of sentencing penalties. Without additional information, this analysis assumes at least one person will be admitted to jail each year for this crime. To account for time to adjudication, these costs are not anticipated to be incurred until one year after the bill takes effect, in FY26; however, a minimal cost may apply in FY25 for individuals detained for some period before adjudication. This analysis estimates House Bill 183 will increase annual incarceration costs of at least \$37.5 thousand to the state and at least \$19.2 thousand to counties. Costs to the state are estimated to be at least \$26.6 thousand in FY26 and will rise to \$37.5 thousand in FY27 and future fiscal years.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB183, are not included in this analysis but could be moderate.

SIGNIFICANT ISSUES

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.

The Office of the Attorney General points out that HB183's reclassification of a second offense of negligent use of a deadly weapon to a fourth degree felony brings it under the purview of Section 31-18-16 NMSA 1978. This section mandates sentence enhancements for noncapital felonies involving firearms. The Attorney General's office emphasizes the importance of clarity in legislative intent, especially in light of case law concerning double jeopardy implications of firearm enhancements. There's an ongoing debate in legal circles, as seen in cases like *State v. Baroz*, about whether offenses requiring firearm use can receive additional penalties without violating double jeopardy principles.

The New Mexico Sentencing Commission raises concerns about the potential impact of HB183 on the state's prison population. Given that the bill elevates certain misdemeanors to felonies, there could be an increase in incarceration rates, which would have financial implications considering the daily cost of incarceration in the state.

From the perspective of the Law Offices of the Public Defender, there are doubts about the deterrent effect of increased penalties, particularly for acts of negligence rather than intentional harm. They argue that negligent use of firearms, often involving hobbyists or unintentional misuse, is typically less severe than intentional threats or violence. Hence, increasing penalties might blur the lines between different levels of intent and severity of harm, which are currently distinguished in the legal system.

Lastly, the Administrative Office of the Courts forecasts that the increased penalties proposed by HB183 may lead to more defendants opting for trials, including jury trials. This could strain judicial resources, requiring more time and effort from judges, courtroom staff, and potentially increasing the demand for public defender services. The bill's broad definition of a "deadly weapon" further expands the scope of offenses that could be subject to these increased penalties.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB183 relates to House Bill 127, which raises the minimum age for firearm purchases to 21.

HB183 relates to House Bill 46, which amends the Criminal Code to allow for a third degree felony conviction if a felon is convicted of being in possession of a firearm or “destructive device.

HB183 relates to House Bill 47, which creates a new third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance.

HB183 relates to House Bill 58, which seeks to repeal the criminal code section mandating instant background checks for firearm sales.

HB183 relates to Senate Bill 69, which establishes a 14-day waiting period for firearm purchases.

HB183 relates to House Bill 129, which also establishes a 14-day waiting period for firearm purchases.

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