

<b>LFC Requester:</b>	<b>Ellen Rabin</b>
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**AGENCY BILL ANALYSIS  
2023 REGULAR SESSION**

**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** 1/24/23  
**Bill No:** HB155

**Sponsor:** Andrea Reeb, Bill Rhem  
**Short Title:** Aggravated Battery on a Peace Officer Penalty

**Agency Name and Code**    305–Office of the Attorney General  
**Number:** \_\_\_\_\_  
**Person Writing**    John Duran  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	FY23	FY24	FY25	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**

*This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.*

### **BILL SUMMARY**

#### Synopsis:

The bill would increase the penalty for Aggravated Battery on a Peace Officer, with the infliction of great bodily harm or with the use of a deadly weapon or in a manner whereby great bodily harm or death can be inflicted, from a 3<sup>rd</sup> Degree Felony Offense to a 2<sup>nd</sup> Degree Felony Offense.

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

### **SIGNIFICANT ISSUES**

As it stands currently:

Simple Assault on a Peace Officer is a misdemeanor offense, with a penalty of up to 364 days jail, See NMSA 1978, Section 30-22-21.

Aggravated Assault on a Peace Officer is a 3<sup>rd</sup> Degree Felony Offense with a penalty of up to 18 months imprisonment, See NMSA 1978 Section 30-22-22.

Assault with Intent to Commit a Violent Felony is a 2<sup>nd</sup> Degree Felony Offense with a penalty of up to 9 years imprisonment, See NMSA 1978 Section 30-22-23.

Battery on a Peace Officer is a 4<sup>th</sup> Degree Felony Offense with up to 18 months imprisonment, See NMSA 1978, Section 30-22-24.

Aggravated Battery on a Peace Officer is a 3<sup>rd</sup> Degree Felony Offense with up to 3 years imprisonment, See NMSA 1978, 30-22-25. See also NMSA 1978, Section 31-18-15.

Penalties therefore appear to progress linearly and consistently based on the level of violence against a peace officer except for assault with intent to commit a violent felony on a peace officer and aggravated battery on a peace officer with great bodily harm or with a deadly weapon. In other words, assault with intent to commit a violent felony on a peace officer carries a stricter penalty of up to nine years incarceration as a second degree felony than aggravated battery on a peace officer (with great bodily harm or with a deadly weapon), which carries a penalty of up to three years incarceration as a third degree felony. Hypothetically therefore, a person who shoots and **hits** a peace officer with a firearm (without killing the peace officer) would face a less harsh penalty (three years) than a person who shoots at, but **misses** a peace officer (nine years) where it was proved the offender intended to shoot the peace officer (a firearm enhancement increases the penalties by three years under this hypothetical for both Aggravated Assault with Intent to Commit a Violent Felony on a Peace Officer and Aggravated Battery on a Peace Officer. See NMSA 1978, Section 31-18-16). This results in a current inconsistent sentencing structure for NMSA 1978, Sections 30-22-25 and 30-22-23. Increasing the penalty for aggravated battery on a peace officer with a deadly weapon or with great bodily harm under NMSA 1978, Section 30-22-25 would bring this penalty in line with and equal to the

penalty for aggravated assault on a peace officer with intent to commit a violent felony under NMSA 1978, 30-22-32.

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None

**TECHNICAL ISSUES**

None

**OTHER SUBSTANTIVE ISSUES**

None

**ALTERNATIVES**

N/A

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

The penalty for Aggravated Battery on a Peace Officer with Great Bodily Harm or with a Deadly Weapon, NMSA 1978, Section 30-22-25 will continue to be disproportionate to the penalty for Aggravated Assault on a Peace Officer with Intent to Commit a Violent Felony, NMSA 1978, Section 30-22-23.

**AMENDMENTS**

None.