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FISCAL IMPACT REPORT

ORIGINAL DATE 2/19/15
SPONSOR Gentry **LAST UPDATED** _____ **HB** 453

SHORT TITLE Additional Felonies for Sentencing **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		250.0	500.0	750.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relate SB83

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)
- New Mexico Sentencing Commission (NMSC)
- Attorney General’s Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 453 proposes to amend the Criminal Sentencing Act, specifically Section 31-18-23 NMSA 1978 (Three Violent felony convictions; mandatory life imprisonment) effective July 1, 2015. The bill removes “great bodily harm” from the definitions and adds the following to the meaning of violent felony

- voluntary manslaughter,
- third degree aggravated battery,
- third degree aggravated battery against a household member,
- second or third degree shooting at a dwelling or occupied building,
- second or third degree to shooting at or from a motor vehicle,
- first degree to kidnapping,
- aggravated or first or second degree to criminal sexual penetration,
- second or third degree criminal sexual contact of a minor,

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- first or second degree to robbery,
- aggravated arson,
- third degree aggravated battery upon a peace officer,
- assault with intent to commit a violent felony upon a peace officer,
- aggravated assault upon a peace officer.

FISCAL IMPLICATIONS

The NMSC report that of the 5,667 inmates committed to the custody of the NMCD on a new admission on 6/30/2014, 2,094 (37%) had a conviction for one of the offenses set forth in the definition of violent felony in HB 453 as their highest charge. At some point in the future, the increased length of stay for offenders required to serve a life sentence pursuant to the three-strikes law would begin to impact the state inmate population.

The FY14 annual cost to the NMCD to house an inmate is \$40.2 thousand. That cost increases on average 3 percent per year, so that same inmate will cost the department \$41.4 thousand in FY15. The effect of the change proposed under HB 453 will be seen in the years beyond FY17.

According to PDD, very few of these life-sentence enhancements are presently charged, but increasing the pool of violent felonies would certainly lead to more such cases. If PDD continues to contract conflict and overflow cases on the basis of the prospective penalty, such cases would cost more to defend. Moreover, in general, higher-penalty cases (and a life sentence is a *very* high penalty) are more likely to go to trial - additionally, there is likely to be a precursor effect where even the *preliminary* charges (of the nine additional felonies enumerated in HB 453) would be more likely to go to trial so as to protect against a prospective future life sentence.

For FY16, PDD requested an increase of \$51.7 million to among other things provide adequate staff to handle the current caseload; the LFC recommended \$5.6 million. Increased caseload from this or any bill that requires lengthy legal representation will impact the general fund appropriations to PDD.

AODA opines that by nearly tripling the number of violent felonies included in the list crimes that can result in mandatory life imprisonment if at least the third conviction was obtained in New Mexico, the number of persons serving a life sentence would be expected to significantly increase and have a substantial fiscal impact on the correction department. Further, whenever potential punishment is increased the number of criminal cases being litigated instead of resolved by plea agreements also increases. If HB 453 becomes law it will almost certainly result in more motion hearings, more trials, and more appeals which will require more fiscal and personal resources for the courts, district attorneys and defenders.

Article 6, Section 2 of the Constitution of the State of New Mexico and NMRA 12-102(A)(1), mandates that all sentences of life imprisonment be directly appealed to the New Mexico Supreme Court. The AGO states that it would likely require significant increase in staff in the Appellate Division but no appropriation is made. A moderate estimation would be at least \$500,000 for 5-6 additional Assistant Attorney General salaries and 1-2 support staff salaries.

SIGNIFICANT ISSUES

PDD provides information on a study on California's three-strikes law showed that it had no

significant effect on deterrence of crime. *See* Worrall, John L. (2004). "The Effect of Three-Strikes Legislation on Serious Crime in California". *Journal of Criminal Justice* **32** (4): 283–96. The 1994 California law is considered to be the source of the prison overcrowding (double their capacity in 2006 and funding issues that frequently make the news in that state. *See* Legislative Analyst's Office, A Primer: Three Strikes- The Impact After More Than A Decade (October 2005). California prison conditions were thereafter declared to be violative of the Eighth Amendment's guarantees against cruel and unusual punishment and the United States Supreme Court ordered the state to reduce overcrowding. *See* **Brown v. Plata**, ___ U.S. ___, 131 S.Ct. 1910 (2011). As a result, California voters approved a constitutional amendment (Proposition 36) in 2012, limiting the usage of the three-strikes law.

AODA indicates that if HB 453 is passed with its dramatic increase in the number of violent felonies that can serve as predicates for a life sentence, a majority of which do not require that someone be killed or seriously injured, it is practically certain to be challenged as in violation of the constitutional rights against cruel and unusual punishment and equal protection. See, U.S. Constitution, Amendment VIII and Amendment XIV, and N.M. Constitution, Article II, Sect. 13 and Sect. 18. California's "three strikes" law was challenged after two consecutive 25 years to life sentences were imposed on an offender who was convicted of two minor theft offenses for shop lifting video tapes, worth \$84.70 and \$68.84 respectively, and the law was upheld by the United States Supreme Court. See, *Lockyer v. Andrade*, 538 U.S. 63 (2003).

PERFORMANCE IMPLICATIONS

The following NMCD performance measures will be impacted by this bill

- Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
- Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;
- Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test; and
- Percent of sex offenders reincarcerated back into the corrections department within thirty-six months.

ADMINISTRATIVE IMPLICATIONS

AODA states that whenever punishment is increased, even if it just a possibility for repeat offenders, the incentive to contest the charges is increased. Persons facing their third violent felony are almost certain to vigorously litigate the case and to go to trial because a mandatory life sentence means there is no incentive to enter a plea of guilty or no contest. More trials will also result in more appeals because there will be fewer waivers of the right of appeal that comes with a plea and if the convictions are upheld the consequences can be very severe. The result will be that more personal and financial resources will be needed so the trial and appellate courts, prosecutors and defenders can fully and fairly litigate all of the violent felony cases that can result in a mandatory life sentence.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB 83

ABS/je/bb