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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 2/10/16
LAST UPDATED _____ **HB** 46 & 228/HJCS
SHORT TITLE Sentencing for Certain Felonies **SB** _____
ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			\$2,941.3	See Increase in Fiscal Implication Section	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 56, HB 60, HB 81, HB 82, HB 83, SB 45, SB 118
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of HJC Substitute for House Bills 46 and 228

House Judiciary Committee substitute for House Bills 46 and 228 proposes to increase imprisonment under the sentencing statues (Section 31-18-15 NMSA 1978) for a noncapital felony resulting in death as follows: for a second degree felony from 15 to 18 years, a third degree felony from six to nine years.

The effective date of the bill is July 1, 2016.

FISCAL IMPLICATIONS

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) is an average of \$123 per day, or about \$45,250 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD’s general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

The length of prison stay based on HJC substitute enhancements would increase as follows:

- Second degree murder increased by 3 years and if an offender earned all available meritorious deductions the expected increase in prison stay of 2.25 years.
- Voluntary manslaughter increased by 3 years and if an offender earned all available meritorious deductions the expected increase in prison stay of 2.55 years.
- Homicide by vehicle increased by 3 years and if an offender earned all available meritorious deduction the expected increase in prison stay of 1.5 years.

Although the NMCD’s budget may not be negatively impacted in FY16 or FY17, it will be impacted as early as FY18 and years thereafter if this bill becomes law. Based on the average admissions over the last four years provided by the NMSC, the table below shows the estimated increase to the general fund by sentence type.

Most Serious Prison Admission Charge	Estimated Annual Admissions (average of last 4 years)	Increased Sentence length (in years)	Estimated Increased Cost Per Offender	Estimated Increased Cost for all Offenders
Second Degree Murder	39	2.25	\$115,388	\$4,500,113
Voluntary Manslaughter	15	2.55	\$115,388	\$1,730,813
Homicide by Vehicle	11	1.5	\$67,875	\$746,625
Total Cost for Prison Stay During Relevant Period				\$6,977,550

The first year the cost to the general fund for the estimated 65 new admissions is \$2.9 million.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

AOC, AODA and PDD agree that higher-penalty cases can result in more trials, which can

increase costs. However, it is not possible to quantify the amount with any certainty. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts, district attorneys and public defenders are as follow:

- PDD: \$152.1
- District Attorneys: \$195.4
- District Courts: \$335.6

SIGNIFICANT ISSUES

PDD states that the bill appears to have no discernible deterrent rationale. For instance, 3rd degree voluntary manslaughter consists of an act occurring during the heat of passion, or upon a sudden quarrel. It strains logic that during the heat of passion or upon a sudden quarrel one might desist from furthering the act due to an increase in the statutory basic sentence. The nature of a heat of passion offense such as voluntary manslaughter is that the individual's reason becomes overcome by the emotionality of the event. Without the presence of reason, there is no deterrent value to the increased penalties proposed in the bill.

The substitute bill addresses the concerns expressed by AOC, AODA and the AGO in their responses to HB46.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- NMCD:
 - 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
- District Courts:
 - Cases disposed of as a percent of cases filed;
 - Percent change in case filings by case type;
- District Attorneys:
 - Average caseload per attorney;
 - Number of cases prosecuted; Number of cases prosecuted per attorney;
- Public Defenders:
 - Percent of cases taken by contract attorneys;
 - Percent of cases that go to trial with clients defended by contract attorneys.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

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Relates to HB 81 and HB 83 – Increase Certain DWI Penalties; HB 82 – Habitual Offender DWI Sentencing, and SB 45 – Create Crime of DWI with Minor in Car; SB 118 – Increase DWI Penalties; HB 60 – Suspension or Deferral of Felony Sentences; HB 56 – Three Strikes Laws

ABS/jle/al/jle