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FISCAL IMPACT REPORT

ORIGINAL DATE 9/30/2016

SPONSOR Pacheco/Zimmerman LAST UPDATED _____ HB 5

SHORT TITLE Three Strikes Law SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$3,000.0- \$5,000.0	\$3,000.0- \$5,000.0	\$6,000.0- \$10,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Law Offices of the Public Defender (LOPD)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)

This analysis utilizes responses received from the above agencies who responded to an identical version of this bill in the 2016 legislative session.

SUMMARY

Synopsis of Bill

The bill adds additional violent crimes to the five crimes covered in the current “three strikes” law. The bill increases the number and type of qualifying felonies under which a person being sentenced for a third conviction – for any combination of listed offenses – must be given a mandatory life sentence.

Currently Included	Additional Crimes
First and second degree murder	voluntary manslaughter
Second degree shooting at or from a motor vehicle	involuntary manslaughter
kidnapping resulting in great bodily harm	assault with intent to commit a violent felony
aggravated, first degree criminal sexual penetration	third degree aggravated battery (great bodily harm or deadly weapon)
armed robbery resulting in great bodily harm	second or third degree shooting at a dwelling or occupied building
	third degree shooting at or from a motor vehicle (injury)
	third degree aggravated battery against a household member (great bodily harm or deadly weapon)
	first degree child abuse (negligent or intentional, resulting in great bodily harm or death)
	the remaining variants of second degree and third degree criminal sexual penetration
	second or third degree criminal sexual contact of a minor
	armed robbery not resulting in great bodily harm
	aggravated burglary
	aggravated arson
	aggravated assault upon a peace officer
assault with intent to commit a violent felony upon a peace officer	
aggravated battery upon a police officer	

Source: AODA, LOPD, AGO

According to the LOPD, the bill removes the existing great bodily harm requirements for shooting at or from a motor vehicle, kidnapping, and armed robbery. The bill also removes the definition of the phrase “great bodily harm” currently contained in Section 31-18-23(E)(1) NMSA 1978.

The fiscal impact of this bill will be large. NMSC shows below that incarceration costs alone over the next 15 years could cause a negative general fund impact of \$60 million.

NMSC provided an extensive cost simulation, provided below:

Simulation of Number of Offenders 2000 – 2014

To determine the impact of expanding the list of qualifying offenses subject to mandatory life imprisonment for three violent felony convictions, the NMSC used data provided by the courts to run a simulation. Table 1 contains the list of charges in the bill that were used in the analysis.

Table 1. Charges

First degree murder
Second degree murder
Manslaughter
Aggravated assault with intent to commit a violent felony
Third degree aggravated battery
Second or third degree shooting at a dwelling or occupied building
Second or third degree shooting at or from a motor vehicle
Third degree aggravated battery on a household member
Kidnapping
First degree child abuse
First through third degree criminal sexual penetration
Second or third degree criminal sexual contact
First or second degree robbery
Aggravated burglary
Aggravated arson
Aggravated assault upon a peace officer
Assault with intent to commit a violent felony upon a peace officer
Aggravated battery upon a peace officer

NMSC has data on court cases disposed from 2000 – 2014. For the simulation, NMSC tried to determine the effect if the law had been changed in 2000 to include the charges above. NMSC selected all cases that had a conviction on any of the above charges from 2000 – 2014. NMSC then counted the number of convictions by offender. Table 2 contains the number of individuals that were convicted once, twice or three times or more over the 15 year time period. The percentage of offenders who had three or more convictions was 0.6%. This would yield an estimated additional 59 offenders at NMCD serving life sentences over the first 15 years of the statute implementation. There were 574 offenders who had two convictions during the time period on these charges (5.3%).

Table 2. Number of Offenders by Number of Convictions

Once	10,143	94.1%
Twice	574	5.3%
3 times or more	59	0.6%
Total	10,776	100%

Estimating Differences in Sentence Lengths

To estimate the difference in sentence lengths, NMSC used NMCD release data. NMSC looked at the average time from sentence date to release date for each of the charges. NMSC found the averages varied widely by charge; ranging from 2 – 19.5 years. It is important to note that this average does not include any pre-sentence confinement credit, so the actual amount of time served is probably higher.

NMSC then calculated the weighted average, which takes into account the number of offenders who served time for each charge relative to the total number. For example, first degree murder has the longest average; however, there are fewer offenders who serve time on that charge compared to a charge like third degree aggravated battery which has a large number of offenders and a significantly shorter average sentence to release length. The weighted average from sentence date to release date across all these crimes was 4.8 years. Upon the third conviction for one of these crimes and a 30 year sentence, NMSC estimates that the average time from sentence to release would be 25.5 years, if an offender earned all available meritorious deduction. This would be an increase in sentence of 20.7 years.

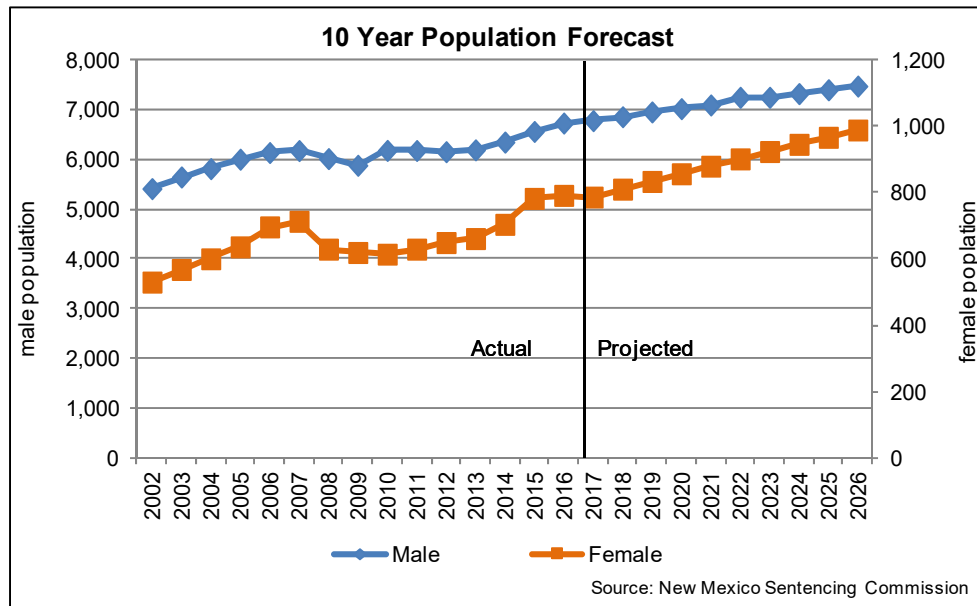
Estimate Cost of Increased Sentence Length

Using the department's average cost to incarcerate a male inmate of \$45,250 per year in a state-owned prison, the individual impact per inmate would be \$936.7 thousand across the inmate's prison sentence. For a 15-30 year period, the cost would be \$55.3 million if all 59 offenders who had three or more convictions on these charges received a 30 year sentence.

According to LOPD, when a life sentence is being considered, the defendant is more likely to retain a lawyer and go to trial with the goal of acquittal or lesser conviction instead of a life sentence. Both the Administrative Office of the Courts (AOC) and LOPD stated that the increase in the number of these complex cases will take more resources, leading to higher costs and could lead to a need for increased indigent defense funding to maintain constitutional compliance.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. An 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.

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, losses in future earnings, and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.



SIGNIFICANT ISSUES

According to NMSC, 28 states, including New Mexico, have a form of three strikes laws. Other states include Texas, Utah, Arizona, Colorado, and Nevada.

LOPD stated that the purpose of the three strikes law as it currently exists is to identify recidivist criminals who show a “violent nature,” or “proclivity for violence,” and impose a life sentence for the safety of the public. LOPD expressed concern that “New Mexico has many felonies that are broadly worded enough to include both violent and non-violent conduct; the bill does not make the distinction to target only people who commit crimes in a violent way, and thus evidence a recidivist tendency justifying life in prison in order to protect the community.” LOPD stated that the lack of definition may sentence criminals who are not violent and may not warrant a life sentence.

LOPD provided examples of the broad nature of the bill, including the following: “kidnapping can include holding someone by the arm to make them take money out of an ATM. The bill does not limit itself to first degree kidnapping, and second degree kidnapping is defined as simply restraint with a particular intent; no actual harm need be suffered. Furthermore, even first degree kidnapping involves only ‘injury,’ and not great bodily harm, so that a scratch or bruise would suffice to be considered ‘violent’ under this bill.” The LOPD is concerned that accruing offenses eligible under the broad categories of the bill could quickly and unnecessarily sentence someone to life in prison.

LOPD also stated that “maintaining the great bodily harm requirement for all offenses that do not inherently require it is the best way to focus on individuals who repeatedly behave in a violent manner, and not just individuals who recidivate criminally. Section 31-18-17 NMSA 1978 already provides for significant sentencing enhancements for repeat felons, without imposing a life sentence. The life sentence provision should be targeting people whose level of violence justifies an extreme sentence for the safety of the community, recognizing that it is significantly greater than the penalty for any of the individual crimes, particularly where Section 31-18-23 NMSA 1978 does not allow any judicial discretion to find that a particular defendant is not in fact violent or a danger to the community.”

Finally, LOPD asserted that “the proposed additional felonies, as a third felony offense, would still be subject to a four-year mandatory sentencing enhancement under Section 31-18-17, the habitual offender enhancement statute applicable to all non-capital felonies (a fourth or subsequent felony offense incurs a mandatory eight year enhancement).” Because that enhancement term applies to each felony in a new proceeding, it is a practical reality that habitual offender enhancements in a single case often total 12 or 16 years.”

The bill also includes a stipulation that applies the provisions of the act to those who are convicted on, before or after its effective date of one of the violent felonies described in Section 1 for the purpose of determining sentencing enhancements pursuant to that section for subsequent violent felony convictions on or after that effective date. This stipulation could create a wave of new individuals sentenced to prison without possibility of parole. NMSC staff, upon review of available New Mexico data, found that 60 individuals would have been sentenced pursuant to the simulation. Six hundred fourteen offenders have committed two strikes under the provisions of the current law. Many of the 614 individuals would be eligible for life sentences if they recidivate under the provisions of the the bill.

PERFORMANCE IMPLICATIONS

The AOC is participating in performance-based budgeting. The bill may have an impact on the measures of cases disposed of as a percent of cases filed and percent change in case filings by case type.

ADMINISTRATIVE IMPLICATIONS

LOPD noted that the proposed legislation would “certainly affect LOPD attorneys’ representation in cases where a potential third violent felony is charged, increasing the number of these cases that go to trial.”

ALTERNATIVES

LOPD stated that “maintaining the great bodily harm requirement for all offenses that do not inherently require it is the best way to focus on individuals who repeatedly behave in a violent manner, and not just individuals who recidivate criminally.” LOPD also stated that Section 31-18-17 NMSA 1978 provides for sentencing enhancements for repeat felons, without imposing a life sentence. The LOPD believes that a life sentence should be retained only for those individuals whose actions truly warrant the sentence. As an alternative, the Legislature could revisit the basic habitual offender statute.

TR/jle