

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 3/17/2017

SPONSOR Montoya LAST UPDATED _____ HB 531/HJC

SHORT TITLE Noncapital Felony Firearm Sentencing SB _____

ANALYST Rogers

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate Increase	Indeterminate Increase	Indeterminate Increase	Recurring	General Fund/Other State Funds

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 13, HB 17, HB 19.

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 531 amends Section 31-18-16 NMSA 1978, governing the alteration of a basic sentence when a firearm is used in the commission of a noncapital felony, to allow for an increase in the sentence enhancement from the current 1 year enhancement to 3 years for a first offense. For a second or subsequent noncapital felony in which a firearm is used, the sentence enhancement may be increased from 3 years to 6 years.

FISCAL IMPLICATIONS

In response to previous, similar bills this session, the Administrative Office of the Courts (AOC), the Administrative Office of the District Attorney (AODA) and the Law Office of the Public Defender (LOPD) stated these types of bills may carry only a minimal fiscal impact, however, an increase of these cases may require additional resources. 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 (in thousands) yearly for the district courts, district attorneys and public defenders are as follow:

- PDD: \$ 86.5
- District Attorneys: \$ 70.1

- District Courts: \$335.6

The PPD reports that it costs more to defend higher-penalty felony cases and it is more likely for those cases to go to trial. Additional higher penalty trials may require PPD to hire more attorneys.

Although the New Mexico Corrections Department's (NMCD) budget may not be negatively impacted in FY17 or FY18, it will be impacted if this bill becomes law: increased length of stay will increase the cost to house an offender in prison. The average cost to incarcerate one inmate over the last four years has increased 4.6 percent.

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 \$44,776 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 by an average \$9.5 million per year, or three percent, since FY14 as a result of growing prison population and inmate needs.

The LFC, in its appropriation recommendation reports that NMCD had a projected deficit of \$9.9 million in FY16.

SIGNIFICANT ISSUES

In previous analysis on similar bills, the AOC has explained sentence enhancements are designed to deter crime, making it less likely that a person will commit a crime, either as a first timer or a repeat offender. Additionally, a sentence enhancement may help to fit the punishment to the crime, and may help to keep repeat offenders off of the streets.

In response to previous bills, the Law Office of the Public Defender cites *State v. Griffin*, 1993-NMSC-071, 116 N.M. 689 to show that firearm enhancement for sentences under New Mexico law is mandatory and do not violate protections against double jeopardy.

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;
 - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months; and
- District Courts:
 - Cases disposed of as a percent of cases filed;

House Bill 531/HJC – Page 3

- 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.

TR/al