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FISCAL IMPACT REPORT

SPONSOR Bash ORIGINAL DATE 2/01/21
LAST UPDATED 2/09/21 HB 140
SHORT TITLE Eliminate Some Mandatory Minimum Sentences SB _____
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with

HB58, HB59, HB114, HB156

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Law Offices of the Public Defender (LOPD)

Administrative Office of the Courts (AOC)

Office of the Attorney General (NMAG)

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC)

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

House Bill 140 eliminates mandatory minimum sentences for the following crimes:

NMSA 1978, Section 17-2-10 Violations of Game and Fish Statutes. Removes language prohibiting a judge from suspending or deferring the 90-day sentence for a third or subsequent misdemeanor violation. This would leave a judge with discretion to impose the basic sentence of up to 364 days.

NMSA 1978, Section 30-9-11 Criminal Sexual Penetration. Eliminates the mandatory term of imprisonment of three years for the second degree felony of criminal sexual penetration where

the victim is between the ages of 13 and 18. The offense would still constitute a special second-degree felony with a 15-year sentence.

NMSA 1978, Section 30-9-13 Criminal Sexual Contact of a Minor. Eliminates the mandatory minimum term of imprisonment of three years for second-degree felony criminal sexual contact of a minor. The offense would still constitute a special second-degree felony with a 15-year sentence.

NMSA 1978, Section 31-18-17 Habitual Offender Enhancements. Removes language prohibiting a judge from suspending or deferring the one-year sentence enhancement for habitual offenders.

NMSA 1978, Section 31-18-23 Mandatory life sentence after third violent felony. Changes the existing law requiring a mandatory life sentence for a third violent felony conviction to provide a judge with discretion to determine whether a life sentence is appropriate.

NMSA 1978, Section 31-18-25 Mandatory life sentence after second violent sexual offense conviction. Changes the existing law requiring a mandatory life sentence for a second violent sexual offense conviction to provide a judge with discretion to determine whether a life sentence is appropriate.

NMSA 1978, Section 31-20-3 Order Deferring or Suspending Sentence. Removes language prohibiting a judge from suspending or deferring a first-degree felony sentence, which is 18 years imprisonment. The changes would allow a judge to defer or suspend the sentence of any defendant convicted of any crime except a capital felony.

NMSA 1978, Section 40-13-6 Penalty for violating orders of protection. Eliminates the mandatory 72-hour sentence for a second violation of a restraining order under the Family Violence Protection Act. This would leave the basic 364-day misdemeanor sentence for violation of a restraining order to the judge's discretion.

The effective date of HB140 is July 1, 2021.

FISCAL IMPLICATIONS

LOPD states that, to avoid mandatory sentences, defendants may be more likely to insist on going to trial in the hopes of a reduced charge or acquittal. By eliminating some mandatory sentences, HB140 has the potential to reduce the number of trials if a wider range of sentences becomes available to judges and more plea alternatives could be considered.

AOC states that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of the bill and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Regarding HB140 in particular, AOC states that the bill may reduce costs if the potentially less severe penalties resulting from the elimination of mandatory minimums encourage defendants to

forgo their rights to trial and trial by jury. However, AOC observes that by replacing mandatory minimums and providing courts with more flexibility in sentencing, the bill may increase costs if it encourages defendants to request jury trials, where they can present additional evidence that might influence a court to impose a reduced sentence.

AODA acknowledges that one argument for eliminating mandatory sentences is the impact they have on the budget. A counterargument is that when violent and repeat felons are isolated from the community, there is an economic benefit in that they are not committing more crimes and causing the criminal justice system to incur costs from investigations and court proceedings.

NMSC and NMCD state that while the fiscal impact of the bill is difficult to estimate, removing mandatory minimum sentences could moderately reduce the prison population, depending on convictions. NMCD reports the average cost to incarcerate a single inmate in FY20 was \$44.8 thousand; however, due to the high fixed costs of the state's public prison facilities, LFC estimates a marginal cost (the cost per each additional inmate) of \$27.8 thousand per inmate per year across all facilities.

SIGNIFICANT ISSUES

AODA observes that mandatory sentences can provide a deterrent effect on future criminal conduct. In addition to their deterrent effect, mandatory sentences for repeat violent offenders and sexual offenses against minors keep victims and the community safe from the offenders at least for the duration of the mandatory sentence. AODA also notes that, in the case of a violation of a domestic violence order, the current mandatory 72-hour sentence benefits victims of domestic violence by providing them an opportunity to seek shelter, alternative living arrangements and financial support.

AODA states that the mandatory sentences in current law provide uniformity throughout the many judicial districts of the state. Allowing judges full discretion will result in unequal imposition of sentences.

LOPD cites a study conducted by Rand Corporation on the effect of mandatory minimum sentencing, which found that “a million dollars spent extending sentences to mandatory minimum lengths would reduce cocaine consumption less than would a million dollars spent on the pre-mandatory-minimum mix of arrests, prosecution, and sentencing. Neither would reduce cocaine consumption or cocaine-related crime as much as spending a million dollars treating heavy users.” See https://www.rand.org/pubs/monograph_reports/MR827.html.

LOPD states that eliminating mandatory minimums would give courts discretion in sentencing, allowing judges to review the specific facts and circumstances of each case and decide which offenders deserve the full sentence and which might benefit from a lesser term followed by probation. Mandatory minimums have been shown to create unfairness by encouraging coerced pleas and imposing unnecessarily long periods of incarceration for offenders convicted of low-level and nonviolent crimes.

HB140 does not apply retroactively. LOPD states that without retroactivity, there will be offenders serving long, mandatory sentences for offenses covered by HB140, while offenders sentenced for the same offenses after the bill's effective date will serve less time.

CONFLICT

HB140 conflicts with:

HB156, which also amends Section 30-9-11 NMSA 1978

HB59, which also amends Section 31-18-17 NMSA 1978

HB114, which also amends Section 31-18-17 NMSA 1978

HB 58, which also amends Section 31-8-23 NMSA 1978

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