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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 2/5/2025

SPONSOR Chavez, N./Reeb/Vincent

BILL
NUMBER House Bill 280

SHORT TITLE Additional Violent Felonies

ANALYST Valdez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	\$50.0	Indeterminate but minimal	\$50.0	Recurring	General Fund
LOPD	No fiscal impact	\$291.1	\$291.1	\$582.2	Recurring	General Fund
Total	No fiscal impact	\$194.0	\$124.0	\$632.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Conflicts with Senate Bills 17 and 35

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Law Office of the Public Defender (LOPD)
New Mexico Sentencing Commission (NMSC)
Children, Youth and Families Department (CYFD)
New Mexico Corrections Department (NMCD)
Department of Public Safety (DPS)

Agency Analysis was Solicited but Not Received From

Healthcare Authority (HCA)
Department of Health (DOH)

SUMMARY

Synopsis of House Bill 280

House Bill 280 (HB280) makes several adjustments to New Mexico felony statutes. Section 1 of HB280 amends Section 31-18-23 NMSA 1978, which currently requires those with three violent felonies to serve a mandatory life imprisonment without parole. HB280 would allow parole for such individuals in the case of geriatric or medical parole as defined in the Probation and Parole Act. Next, the bill would change the definition of violent felony conviction to include violent

felonies committed before the defendant reached the age of eighteen in the case that the defendant was sentenced as an adult consistent with the laws of New Mexico. It would also include violent felonies committed before the defendant reached the age of eighteen if the defendant was sentenced as an adult in another state pursuant to the laws in that state. HB280 also adds several offenses to the definition of “violent felony.” These additional offenses include:

- Voluntary manslaughter,
- Involuntary manslaughter,
- Aggravated battery,
- Shooting at a dwelling or occupied building resulting in great bodily harm,
- Aggravated battery against a household member,
- Abuse of a child that causes great bodily harm to the child,
- Negligent abuse of a child that results in death,
- Intentional abuse of a child that results in death,
- Aggravated arson,
- Aggravated battery upon a peace officer,
- Homicide by vehicle or great bodily harm by vehicle, and
- Injury to pregnant woman by vehicle while under the influence of alcohol or drugs, driving recklessly, or resisting, evading, or obstructing an officer.

Other changes in the definition of “violent felony” include removing the requirement that robbery while armed with a deadly weapon result in great bodily harm to be counted as a violent felony. Finally, the bill also slightly amends the legal references in the listing of criminal sexual penetration as part of the definition of “violent felony.”

In Section 2, HB280 amends Section 31-21-10 NMSA 1978 to include an additional reference to the conditions under which an inmate sentenced to life who has served thirty years becomes eligible for a parole hearing. The existing law refers to 31-21-10.2 which makes an exception for “youthful offenders” to the requirement of serving 30 years of a life sentence before becoming eligible for a parole hearing. HB280 would add a reference to Subsection A of Section 31-18-23 NMSA 1978, which lays out the law that requires an offender with three separate, violent felonies to serve a life sentence.

The effective date of this bill is July 1, 2025.

FISCAL IMPLICATIONS

HB280 expands the definition of “violent felony” for purposes of the Criminal Sentencing Act (31-18-12 through 31-18-21 NMSA 1978). Since more offenses would count as “violent felonies” after HB280, more offenders will be subject to mandatory life imprisonment for three violent felonies. New Mexico Corrections Department (NMCD) notes that this would increase the number of offenders serving time in the state’s correctional facilities. More inmates lead to higher operational costs, including staffing, maintenance, and programming.

The Law Offices of the Public Defender (LOPD) also notes that HB280 could increase the number of cases going to trial. In particular, LOPD notes this would require more significant resources from district attorneys, investigators, and public defenders. LOPD would likely need more associate trial attorneys and trial attorneys. Associate trial attorney’s mid-point salary,

including benefits, is \$136.3 thousand Albuquerque/Santa Fe and \$144.8 thousand in the outlying areas (due to the necessary salary differential to maintain qualified employees). A Trial attorney's mid-point salary, including benefits, is \$149.1 thousand in Albuquerque/Santa Fe and \$157.6 thousand in the outlying areas (due to the salary differential required to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12.9 thousand with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$124 thousand.

Adding an exception for geriatric and medical parole for those serving a life sentence due to three violent felonies could potentially save the state money. However, a 2024 LFC evaluation on NMCD showed that just eleven people had been released between FY21 and FY24 under medical and geriatric parole. Those eleven released individuals came from 225 applicants for an approval rate of 4.9 percent or about 2.8 releases per year. HB280 could potentially expand the universe of inmates eligible for release. Given that most were rejected because they did not meet the criteria of permanent incapacitation or terminal illness, it is unlikely that this change would result in many more releases. Assuming one release per year and given that LFC has estimated the marginal cost of incarcerating one individual for a year at \$28.2 thousand, this analysis estimates this change could save the state \$28.2 thousand per medical or geriatric paroled offender per year. However, it may be many years before an offender is convicted under SB280's criteria and subsequently is granted parole due to medical or geriatric status. As such, these savings are not included in the table summary above.

Finally, NMCD states that if SB280 passes, they would need to make changes and updates to their offender management system, electronic health records system, and other integrated systems. They project these changes will cost \$50 thousand to implement.

The estimated budget impact above considers at least one additional attorney per year for LOPD, and \$50 thousand in costs to NMCD for their data system update. While the prison population is likely to increase over the long-term if SB280 passes, it is unlikely to change before FY27. That is because a third violent felony conviction is likely to leave an offender in jail for at least 1.4 years for a fourth-degree felony, according to the New Mexico Sentencing Commission. However, the population targeted by this bill are repeat violent offenders, so even without the life imprisonment enhancement, their third violent felony is likely to keep them in prison for more than two years, meaning there would not be a difference in population or associated costs for NMCD until at least FY28. More intensive litigation would likely start as soon as FY26, hence LOPD's cost per attorney is included in the estimate.

SIGNIFICANT ISSUES

The Administrative Office of Courts (AOC) raises three significant issues. First, increasing penalties leads to more defendants invoking their right to a trial leading to more jury trials, increasing demands on judge time, courtroom staff time, courtroom availability, jury fees, and public defender services. Second, adding a requirement for life imprisonment upon the third conviction requires, pursuant to Section 31-18-24 NMSA 1978, a sentencing hearing. These additional hearings are also likely to add workload to the courts. Third, AOC notes that currently, a violent felony conviction by a minor does not count toward the three violent felony threshold under Section 31-18-23 NMSA 1978. HB280 would make an exception if the minor were sentenced as an adult in New Mexico or another state.

LOPD notes the presumed purpose of Section 31-18-23 is to target violent individuals who pose a threat to the safety of the community. However, they also point out that HB280 does not maintain the centrality of physical harm in all proposed changes. LOPD details issues with several of the changes:

Armed robbery is essentially a specific form of assault. It is the use of a threat of violence to steal from someone, where a weapon is used. Again, noting that almost any object can be considered a deadly weapon, not all armed robberies involve physical harm whatsoever. Thus, maintaining the statute's current great bodily harm requirement is vital to maintaining the statute's purpose.

Similarly, third-degree aggravated battery (whether the general version, against a household member, or against a peace officer) does not inherently require injury at all, as the deadly weapon alternative carries no such requirement. Particularly because the term "deadly weapon" can include extremely innocuous objects, limiting the "violent offense" definition to those batteries resulting in great bodily harm better achieves the goal of Section 31-18-23, which is to identify individuals with a proclivity for extreme violence.

All homicides result in the death of a human being. Nevertheless, within "homicide," there is essentially a four-tier structure for culpability, which is premised on the intentions of the actor, and the relative sentences reflect a societal recognition that not all deaths are murder. Section 31-18-23 already includes both first and second-degree murder. However, HB280's proposed addition of manslaughter is highly problematic.

While voluntary manslaughter involves intentional conduct, it is defined by the existence of "provocation," which is what makes it different from "murder." In other words, it is commonly understood that a person who is not necessarily or otherwise inclined to violence, acted violently because the victim put them into a highly provoking situation. Thus, this offense does not evidence a person's "proclivity for violence."

Even more troubling, involuntary manslaughter essentially constitutes death resulting from criminal negligence. Negligent behavior – while it can be dangerous and may warrant criminal punishment – does not carry with it the level of culpability associated with heedlessly violent behavior, nor does it evidence a person's "violent nature."

This rationale similarly applies to negligent child abuse, which HB280 proposes to include as a "violent felony." To be considered a "violent" crime triggering the life sentence, only intentional child abuse addresses the type of violent individual the statute is concerned with. Similarly, injuries from car crashes are not intentional acts falling within the scope of "violent" behavior this statute is targeting. These crimes fall under the scope of criminal negligence crimes. Without minimizing their inherent seriousness and noting that when committed under the influence, they are subject to their own enhancements, often resulting in very lengthy sentences, these offenses do not coincide with a violent nature or proclivity for violence.

Finally, third-degree aggravated battery does not inherently require injury at all, as the deadly weapon alternative carries no such requirement.

LOPD also highlights the problems with eliminating parole as a possibility, which could leave some in prison longer for three minor violent crimes than they would have been for first-degree

murder:

In addition to the inclusion of certain felonies as “violent” felonies, where a life sentence is given as an enhancement incurred for three separate events, where each crime alone would not have warranted such a severe penalty, parole eligibility should be maintained. HB280 makes such inmates ineligible for parole unless they have served 10 years of the life sentence and are over 60 years old. Because whether to grant or deny parole will be case-specific and at the discretion of the parole board, an “or” might be more appropriate. If an inmate must be sixty years old, to even be considered, a defendant could be sentenced to life under Section 31-18-23 while in their 20s and then would not become eligible for parole until after serving more than 30 years, which is an even more restrictive parole eligibility than the life sentence for first-degree murder. See Section 31-21-10(A) (eligible after 30 years).

The New Mexico Sentencing Commission also points out a potential conflict between HB280 and the New Mexico Constitution:

The applicability clause included in HB 280 applies the provisions of the bill to persons who were convicted of violent felonies before July 1, 2025 (the effective date of the bill) for the purpose of determining sentencing enhancements for subsequent violent felonies. The retroactive inclusion of violent felony convictions that occurred before July 1, 2025, is possibly in violation of Article II, Section 19 of the Constitution of New Mexico. Article II, Section 19 prohibits ex post facto laws, which the New Mexico Court of Appeals has interpreted to apply to retroactive statutes that increase the punishment for a prior offense. See *Yepa v. N.M. Taxation & Revenue Dep’t*, 2015-NMCA-099. The New Mexico Supreme Court has held that a statute is retroactive if it “affixes new disabilities to past transactions”. See *Howell v. Heim*, 1994-NMSC-103. The changes in HB 280 would likely be retroactive, and may also be considered to increase the punishment for a prior offense, because they would apply to offenses committed before the bill would be enacted, and because they would “affix[] new disabilit[y]” to those offenses by making them count toward a sentence of life imprisonment under Section 31-18-23 NMSA 1978.

The Department of Public Safety (DPS) shows evidence that New Mexico's sentences for violent crimes are lower than those of the other states and the federal government, even though the state has the second highest rate of violent crime:

According to the *New Mexico Criminal Justice Data Snapshot* report released on January 6, 2025 by the Bureau of Justice Assistance of the U.S. Department of Justice and the Council of State Governments, for the most recent year with available data, the average amount of time served for a violent crime in New Mexico was 40 percent lower than the national average. The average time served was 2.7 years, while the national average was 4.5 years served. DPS believes the enhancement of sentences for violent crime would assist in lowering the state’s high violent crime rate.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed, and
- Percent change in case filings by case type.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 35 (also amending Section 31-18-23 NMSA 1978) and SB 17 (also amending Section 31-21-10 NMSA 1978).

JV/hj/SL2