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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_

**SPONSOR** Montoya/Reeb **ORIGINAL DATE** 3/3/2025

**BILL**

**SHORT TITLE** Basic Sentence in Violent Crimes **NUMBER** House Bill 547

**ANALYST** Valdez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
LOPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
AODA	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

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

Relates to Senate Bill 375

### Sources of Information

LFC Files

Agency Analysis Received From  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Sentencing Commission (NMSC)  
 New Mexico Corrections Department (NMCD)

Agency Analysis was Solicited but Not Received From  
 Administrative Office of the Courts (AOC)  
 Law Offices of the Public Defender (LOPD)

## SUMMARY

### Synopsis of House Bill 547

House Bill 547 (HB547) amends Section 31-18-15.1 NMSA 1978, limiting judges to consider aggravating circumstances, but not mitigating circumstances, in sentencing hearings for serious violent offenses as defined in Section 33-2-34 NMSA 1978. Current law allows a judge to consider mitigating and aggravating circumstances in sentencing hearings. This bill would eliminate the consideration of mitigating circumstances, which would shorten their sentences, if the offender is guilty of a serious violent offense under the law.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

HB547 could increase sentences for serious violent crimes if passed, resulting in increased costs of incarceration for the New Mexico Corrections Department (NMCD). Aggravating factors are those which support a stiffer penalty or longer incarceration. If a judge considers only aggravating factors, offenders will only see longer sentences since the judge would ignore mitigating factors that could shorten the sentence. The New Mexico Sentencing Commission's (NMSC) FY23 Profile of New Mexico Prison Population found that 68.4 percent of men (2,743 individuals), and 47.6 percent of women (201 individuals) incarcerated in New Mexico correctional facilities were convicted of a violent crime. While noting that "serious violent crime" is defined in statute (Section 33-2-24 NMSA 1978) and is only a subset of violent crime, HB547 would only increase the sentences of those guilty of serious violent crimes and admitted into New Mexico correctional facilities. The result of HB547 is that they would stay in prison longer than they would have under current law. The cost of that marginal time constitutes most of the cost of HB547. NMSC estimates that serious violent offenders serve on average 7.1 years. HB547 would extend that time for some individuals, with the state incurring the marginal costs of the bill after 7.1 years in approximately FY33.

Given the discretion judges will have under HB547 to consider longer sentences for serious violent criminals, and the range of sentences currently applied to perpetrators of serious violent offenses, it is difficult to quantify the cost to NMCD. However, because this only applies to serious violent offenders, the bill would not incur significant additional costs for several years. In addition to incarceration costs, increasing penalties lead to more trials, litigation, judge time, courtroom staff, and jury costs. In addition, some administrative costs will be associated with statewide updating of the statutory changes. These minor costs would fall on the Administrative Office of the Courts (AOC), Law Offices of the Public Defender (LOPD), and the Administrative Office of the District Attorneys (AODA).

## SIGNIFICANT ISSUES

AODA points out that the language in the bill is ambiguous, leaving open a potential source of conflict over meaning:

The amendments to Section 31-18-15.1, NMSA 1978 as provided for in this bill, appear to make it so that sentencing judges cannot consider mitigating circumstances when a person is convicted of a serious violent felony. However, the use of the word "may" on page 2, line 1, is permissive. Therefore, criminal defense attorneys will certainly argue that the use of that language does not mean that a sentencing judge is prohibited from considering mitigating circumstances.

NMSC has the same concern:

The use of "may" rather than "shall" means that the change could be reasonably interpreted as giving permission for judges to choose to only consider the aggravating circumstances (and not the mitigating circumstances), rather than prohibiting judges from considering mitigating circumstances altogether. It is unclear whether that is the intention of the bill. If HB547 would prohibit judges from considering mitigating circumstances when a defendant is convicted of a serious violent offense, that may result in longer prison sentences and more people being incarcerated by the Corrections Department.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Relates to Senate Bill 375, which makes Section 33-2-34 NMSA 1978, a section of law to which HB375 refers.

JV/rl