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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/31/13  
**LAST UPDATED** \_\_\_\_\_ **HB** 123  
**SPONSOR** Cook  
**SHORT TITLE** Additional Violent Felonies For Good Time **SB** \_\_\_\_\_  
**ANALYST** Trowbridge

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	None to Minimal*	None to Minimal*	None to Minimal*	None to Minimal, but may increase in subsequent years*	Recurring	General Fund

\*See "Fiscal Implications" discussion below.  
(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
Administrative Office of the District Attorneys (AODA)  
New Mexico Corrections Department (NMCD)  
Attorney General's Office (AGO)  
Administrative Office of the Courts (AOC)  
NM Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

HB 123 amends the Earned Meritorious Deductions ("Good Time") Law to clarify that those offenders serving life sentences without the possibility of parole or release cannot earn good time. It further amends this law to add the crime of first degree murder, homicide by vehicle or great bodily harm by vehicle while under the influence of intoxicating liquor or drugs, and abuse of a child that results in death or great bodily harm, to the list of serious violent offenses.

The New Mexico Corrections Department (NMCD) states if an individual commits these additional crimes, it would then constitute a "per se" or automatic serious violent offense. This

means that offenders convicted of these crimes would only be eligible to earn up to four days of good time per month while in prison, as opposed to up to 30 days of good time per month for crimes which are not listed or defined as serious violent offenses. Offenders earning only 4 days per month of good time serve approximately 85 percent of their prison sentences, while those earning 30 days of good time per month generally serve about 50 percent of their prison sentences.

NMCD reports first degree murder carries a sentence of life imprisonment or of life imprisonment without the possibility of parole. In either case, under current law, all life sentence offenders serve a full thirty year sentence (with no good time eligibility). The bill's inclusion of first degree murder as a serious violent offense on page 7 (Section 33-2-34 (L)(4)(a) is intended to ensure that serious youthful offenders sentenced to serve less than a life sentence in NMCD custody can only earn four days of good time per month, not 30 days per month.

NMCD adds that abuse of a child resulting in death or great bodily harm is a first degree felony carrying an eighteen year prison sentence or a life sentence (for the death of a child). Homicide by vehicle or great bodily harm by vehicle while under the influence of alcohol or drugs is a third degree felony carrying a prison term of six years (for the death of a human being) or three years. Sentencing judges can sentence offenders found guilty of these new-created serious violent offenses to probation in lieu of incarceration (unless a life sentence is required by the conviction), but if sentenced to prison a two year parole term would attach.

The Attorney General's Office (AGO) indicates that HB 123, if enacted, would amend §33-2-34 NMSA ("Eligibility for earned meritorious deductions") as follows:

1. The bill clarifies the nature of a "heroic act" which might affect an incarcerated person's earned meritorious deductions.
2. The bill clarifies language regarding the inapplicability of earned meritorious deductions to sentences of life imprisonment in the wake of the recent repeal of the death penalty.
3. The bill adds first degree murder, abuse of child resulting in death or great bodily harm, vehicular homicide, and great bodily harm by vehicle while under the influence of intoxicating liquor or drugs to the list of crimes that must be treated as serious violent offenses for purposes of earned meritorious deductions.
4. The bill clarifies that first, second, and third degree child abuse resulting in death or great bodily harm may not be considered as possible non-serious violent offenses for purposes of earned meritorious deductions.
5. The bill replaces the term "injury" with "harm" as it relates to DWI-related crimes which may be considered as possible non-serious violent offenses for purposes of earned meritorious deductions.

The effective date of the Act is July 1, 2013.

## **FISCAL IMPLICATIONS**

Should the Legislature and the Governor determine that it is appropriate to pass this bill in the interests of enhancing public safety, NMCD estimates that the bill will not increase its incarceration costs during the relevant three year period. That is, most if not all offenders convicted under this bill would still be serving their basic prison sentences during the relevant

three year fiscal period, regardless of whether they were earning 30 days or only 4 days of good time per month. However, NMCD notes that incarceration costs may increase substantially in subsequent years as inmates convicted of these new serious violent offenses serve 85 percent of their prison sentences instead of only 50 percent of their sentences. If the bill is enacted, increased sentence time for serious violent offenders could deter future offenders and lower the rate of incarceration. Any neutral or positive fiscal impact of the bill's deterrent value cannot be accurately predicted at this time.

NMCD indicates the classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$38,070 per year in a state-owned and operated prison to \$31,686 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$29,375 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

NMCD also states cost per client in Probation and Parole for a standard supervision program is \$2,227 per year. The cost per client in Intensive Supervision programs is \$4,311 per year. The cost per client in Community Corrections is \$3,489 per year. The cost per client per year for female residential Community Corrections programs is \$33,281 and for males is \$21,728.

The Association of District Attorneys (AODA) reports that these changes increase the number of cases automatically designated as serious violent offenses and will result in persons convicted of the designated child abuse and vehicular homicide and great bodily harm cases serving longer sentences.

Whenever penalties increase there is almost always an increase in the number of cases resolved by trials instead of pleas so there is likely to be a fiscal impact on DA offices that will have to litigate more cases.

The AGO states that if enacted into law, the bill could result in prisoners convicted of certain offenses serving a longer portion of their sentences.

The AOC indicates 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 this law 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. Additionally, the number of cases resulting in plea agreements may decrease because of this enhanced penalty. This means there would be more jury trials and would negatively affect the jury fund.

### **SIGNIFICANT ISSUES**

NMCD reports that the bill's inclusion of first degree murder as a serious violent offense on page 7 (Section 33-2-34 (L)(4)(a)) is intended to ensure that serious youthful offenders sentenced to serve less than a life sentence in NMCD custody can only earn four days of good time per month, not 30 days per month. Amending the bill to add a reference to Section 31-18-15.3 on page 7 will make this intention more clear. This clarification, along with the new language

already added to Section 33-2-34 (G) on page 5 of the bill, will ensure that serious youthful offenders are only eligible to earn up to four days of good time when sentenced to serve less than a life sentence in NMCD custody, while also ensuring that those offenders sentenced to serve life sentences for first degree murder remain ineligible to earn any good time at all.

AODA reports first degree murder is punishable as a capital felony and the sentence imposed is either life or life without parole, depending upon the circumstances. (See, Section 30-2-1 and Section 31-18-14, NMSA 1978) AODA states that clarification is needed to indicate that persons sentenced to life without parole for first degree murder are not eligible for any meritorious deductions.

AODA indicates that intentional child abuse resulting in death is punishable by life in prison if the child killed was younger than 12 years old. (See, Section 30-6-1[H] and Section 31-18-15[A][1]) while other first degree child abuse crimes resulting in death are simply punished as a “regular” first degree felony with an 18 year prison sentence. (See, Section 30-6-1[F]: negligent child abuse resulting in death and Section 30-6-2[G]: intentional child abuse resulting in death of a child 12 to 17 years of age, and Section 31-18-15[A][3])

In addition, AODA notes that New Mexico persons sentenced to life in prison are not eligible for parole until they have served at least 30 years. (See, Section 31-21-10[A]) It is unclear how meritorious deductions, of up to four days per month, may be calculated on the life sentences imposed for first degree murder and intentional child abuse resulting in death of a child under age 12 since life sentences are by definition, indeterminate, and prisoners serving life are not eligible for an early release until they have served at least 30 years.

AODA also states that the penalties for homicide by vehicle and great bodily harm by vehicle while the operator was under the influence of intoxicating liquor or drugs shall be enhanced by four years for each prior DWI conviction obtained within the prior ten years. (See, Section 66-8-102[D]). The change proposed with this bill to mandate limiting meritorious deductions and the that subsection may have a significant impact on prison population

The Attorney General’s Office states this bill is narrowly-drafted and makes only minor changes to existing law regarding earned meritorious deductions. Some of its changes are reflections of recent changes to law. As such, there is little fodder for objection. AGO adds historically, but not apparently by design, crimes classified as serious violent offenses for purposes of earned meritorious deductions have an intent component. Imposing serious violent offense status on crimes associated with death or great bodily harm caused by vehicle could be challenged on the basis that the offender did not intend the logical consequence of his or her actions and therefore should not face the same structure of incarceration time as that of a traditional violent offender. However, other states categorize offenses involving death and great bodily harm caused by vehicle as the equivalent of serious violent offense. The focus is on the violence of the actual harm, not on the intent to employ violence on the part of the offender.

## **SIGNIFICANT ISSUES**

The New Mexico Sentencing Commission (NMSC) reports that individuals who commit serious violent offenses are required to serve not less than 85 percent of their sentence. An offender who commits first degree murder, when an aggravating circumstance is not found to exist, is sentenced to life imprisonment (See Section 31-20A-2 NMSA 1978). An offender who commits

intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child (See Subsection H of Section 30-6-1 NMSA 1978). The sanction for the offense is life imprisonment.

Current language in Subsection G of Section 33-2-34 NMSA 1978, reads as follows: “The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment...”.

The proposed amendments in HB 123 to Section 33-2-34 NMSA 1978 may be in conflict with the current language set forth in Subsection G of that statute.

### **PERFORMANCE IMPLICATIONS**

The NMCD indicates that upon these offenders’ release from prison, probation and parole officer caseloads may be impacted, and the performances targets or measures for number of offenders per probation and parole officer may not be met. However, with offenders being released only after 85 percent of their sentences have been served, probation and parole caseloads could decline. Furthermore, with various initiatives NMCD is exploring and implementing (such as seeking to amend the law to allow NMCD to safely increase its intensive supervision caseloads from 20 to 40 offenders per officer), the caseloads could ultimately still be distributed more equally across standard supervision and intensive supervision officers.

### **ADMINISTRATIVE IMPLICATIONS**

NMCD states that HB 123 will have no administrative implications during the relevant three year fiscal period. Any future increase in NMCD’s prison population could likely be handled by planning action in either the form of increased partnership with our private vendors or policy adjustments in the long term. However, it is possible that the bill (by essentially lengthening the basic prison sentences for these crimes from 50 percent to 85 percent) could deter some potential offenders from engaging in the covered offenses in the first place, and might result in minimal decreases in NMCD’s prison population and probation/parole caseloads.

### **PERFORMANCE IMPLICATIONS**

The AOC notes that 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
- Percent change in case filings by case type

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The AGO notes HB 123’s relationship with:

HB84 – “UNBORN VICTIMS OF VIOLENCE ACT” (Larry A. Larrañaga), which would create new offenses for crimes causing death or great bodily harm to unborn victims.

and

HB97 – “HOMICIDE & GREAT BODILY HARM BY BOAT” (Dennis J. Roch), which would create new offenses for crimes involving causing death or great bodily harm by boat.

## TECHNICAL ISSUES

AOC notes HB 123 amends Section 33-2-34 NMSA 1978 to clarify that the statutory provisions shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of “life imprisonment without possibility of release or parole,” rather than a sentence of death.

## ALTERNATIVES

NMCD suggests the bill be amended as follows:

Inclusion of first degree murder as a serious violent offense on page 7 (Section 33-2-34 (L)(4)(a)) is intended to ensure that serious youthful offenders sentenced to serve less than a life sentence in NMCD custody can only earn four days of good time per month, not 30 days per month. Amending the bill to add a reference to Section 31-18-15.3 on page 7 (in (L)(4)(a) “first and second degree murder, as provided in Sections 30-2-1 **and 31-18-15.3**”) will make this intention more clear. This clarification, along with the new language already added to Section 33-2-34 (G) on page 5 of the bill, will ensure that serious youthful offenders are only eligible to earn up to four days of good time when sentenced to serve less than a life sentence in NMCD custody, while also ensuring that those offenders sentenced to serve life sentences for first degree murder remain ineligible to earn any good time at all

TT/bm