

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 2/27/15

SPONSOR Montoya LAST UPDATED _____ HB 535

SHORT TITLE Sentencing for Certain Felonies SB _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB587

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

HB 535 amends Section 31-18-15 NMSA 1978, the statute governing sentencing authority for noncapital felonies by increasing the basic sentence for a second degree felony resulting in the death of a human being from fifteen years to twenty years imprisonment, and increases the basic sentence for a third degree felony resulting in the death of a human being from six years to twelve years imprisonment. HB 535 also deletes a reference to Section 31-18-16.1 NMSA 1978, a statute that has been repealed.

FISCAL IMPLICATIONS

NMCD stated that it is difficult to estimate the fiscal impact of this bill. It is unknown at this point just how many new convictions for second and third degree felonies resulting in the death of a human being will occur in any given year. It is also unknown if the sentencing judges will send these offenders to prison or impose probation in lieu of incarceration in a NMCD prison. The increased incarceration periods resulting from the passage of this bill will not begin to fiscally impact NMCD in the relevant three year fiscal period, but could minimally to moderately

fiscally impact NMCD in subsequent years as the offenders serving longer prison sentences because of this bill start serving that part (the longer or extended part) of their prison sentences. NMCD's current incarceration costs are noted below.

The average cost to house an NMCD inmate in 2014 was \$100.83 per day or \$36.8 thousand annually. The cost to house inmates varies depending on custody level and whether the inmate is housed in a private or public facility. The average annual probation and parole cost is \$2,783 for standard supervision, \$2,563 for Intensive Supervision programs, \$27.4 thousand for women's residential treatment centers, and \$18.1 thousand for men's residential treatment centers.

There is no estimate for how many offenders would be affected by this bill, but for every increase of 10 inmates in the prison population the estimated cost would be \$368 thousand annually.

PDD stated that this bill, if passed, likely would indirectly impact the work loads of courts, prosecutors, and public defenders by making it more likely for a case to go to trial rather than be resolved through a plea agreement: Other things being equal, for example, a defendant facing a possible 30 year sentence on a first-degree felony charge would be more likely to accept a plea offer to a second degree felony if the basic sentence for that crime were 15 years rather than 20 years because he or she would receive a greater benefit from agreeing to plead guilty. This bill, if enacted, likely would have a direct major impact on the budget of the Department of Corrections by increasing prison populations, particularly since it substantially increases the penalties for whole classes of crimes. The bill contains no provisions to ameliorate this impact – for example, by reducing the sentences for some crimes deemed less culpable at the same time as increasing the sentences for other crimes deemed more culpable.

SIGNIFICANT ISSUES

AODA stated that under HB 535, the basic sentence for a second degree felony resulting in the death of a human being will be twenty years, which is longer than the basic eighteen year sentence for a first degree felony (higher penalties apply for first degree felonies resulting in death and for first degree felonies for aggravated criminal sexual penetration.)

PDD provided the following:

One issue with this bill the Legislature may wish to consider is that it would upset the rough gradation of penalties between different levels of crimes in the current statute in a way that seems counterintuitive. For example, a second degree felony resulting in death would be punished more severely than a first degree felony; and a third degree felony resulting in death would be punished more severely than a second degree felony.

Further, factors unique to each particular crime go into the determination of whether a felony should be classified as a 1st, 2nd, 3rd, or 4th degree felony. While a death resulting from an unlawful act is certainly more tragic and blameworthy, it is not clear that all second-degree felonies resulting in death should be deemed more culpable than all first degree felonies not resulting in death, nor that all third-degree felonies resulting in death should be deemed more culpable than all second degree felonies not resulting in death.

For example, kidnapping is a first-degree felony if the defendant failed to “voluntarily

frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim.” Section 30-4-1(B) NMSA 1978. This class of crimes thus includes offenses involving the infliction of grave and substantial mental and physical harm to the victim. By contrast, second degree felonies resulting in death include crimes in which death was relatively instantaneous. It appears difficult to argue that as a class these crimes are always worse.

An alternative approach the Legislature could identify particular crimes it believes are not sufficiently punished and increase the penalties for those crimes.

Finally, keep in mind that as the penalties for some crimes are increased, this may lead to the perception that some other crime is not being sufficiently punished, leading to an upward spiraling of penalties over time. That trend demands more money be allocated for correction facilities, courts, prosecutors, and public defenders to represent indigent defendants. Along with the perceived blameworthiness of a particular crime it may be worthwhile for the Legislature to consider whether the State budget can afford these additional costs.

EC/bb/aml/je