

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

SPONSOR Pacheco ORIGINAL DATE 1/20/2016
LAST UPDATED _____ HB 60
SHORT TITLE Suspension or Deferral of Felony Sentences SB _____
ANALYST Rogers/Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
Attorney General's Office (AGO)
Law Office of the Public Defender (LOPD)
Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Bill

Section 1 of HB 60 amends Section 31-20-3 NMSA 1978 to prohibit a sentencing court from suspending or deferring more than fifteen percent of the basic sentence of imprisonment for crimes defined as serious violent offenses by Section 31-18-15 NMSA 1978.

Section 2 of HB 60 proposes to amend Section 31-20-4 NMSA 1978 by adding language at the providing that an order deferring or suspending a sentence applies to the entire judgment unless otherwise prohibited by law.

FISCAL IMPLICATIONS

Responding agencies all indicated unknown fiscal implications. However, there will be costs for the courts to update and distribute statutory changes to the courts. The Administrative Office of the Courts (AOC) explained that "as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional

judge time, courtroom staff time, courtroom availability and jury fees. 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.”

SIGNIFICANT ISSUES

The Attorney General’s Office (AGO) responded that HB 60 “imposes a statutory minimum sentence for all serious violent offenses. In doing so, it would limit a sentencing court’s ability to impose probationary sentences if warranted by judicial discretion.”

The AGO also stated that an “unintended consequence of HB 60 might be to actually reduce the time serious violent offenders spend incarcerated because, faced with mandatory minimum sentencing requirements, sentencing courts may opt to run more sentences concurrently, rather than consecutively.”

The AGO points out another unintended consequence – the amendments in the bill may change the current practices of the courts when considering a deferred sentence. The AGO states that “typically, when a sentencing court defers a defendant’s sentence, it defers the entire sentence, contingent on a defendant successfully completing a period of supervision. Sentences are rarely partially deferred, but they are often partially suspended.”

The apparent intent of Section 2 of HB 60 is to make a conforming amendment, according to the AGO. However, the proposed language enacts a substantive change in New Mexico’s sentencing law. Under current law, when a defendant is sentenced for multiple offenses, the resulting sentence is a single sentence and must be served completely. The amendment proposed in Section 2 of HB 60 implies that the Legislature intends that sentences could be served and completed piece by piece. This conflicts with, 31-18-15(C) NMSA 1978 which states that “whenever any convict shall have been committed under several convictions with separate sentences, they shall be construed as one continuous sentence for the full length of all the sentences combined.”

The New Mexico Sentencing Commission (NMSC) does not have data that would illustrate how frequently a serious violent offender’s basic sentence is deferred or suspended, in whole or part. However, a Sentencing Commission report entitled “New Mexico Prison Population Forecast: “FY 2016 – FY 2025” (July 2015), data showing trends for new admissions to the New Mexico Corrections Department for serious violent offenses. In FY08, the number of new male admissions for serious violent offenses was 212. In FY14, that number had increased to 360, a 70 percent increase. In FY08, the number of new admissions for females for serious violent offenses was 11 and rose to 21 in FY14, a 91 percent increase.

Trends in Serious Violent Offenses

	FY08	FY14	Percent Change
Male	212	360	70%
Female	11	21	91%

Source: New Mexico Sentencing Commission

The NMSC also provided data for time served in a report titled “Time Served in New Mexico Prisons, FY 2013: Analysis of the Impact of Earned Meritorious Deductions (January 2014).” In FY13, male serious violent offenders served 84.4% of their prison sentence and 87.5% of their total sentence. In FY14, female serious violent offenders served 87.1% of their prison sentence and 89.7% of their total sentence.

ADMINISTRATIVE IMPLICATIONS

The AOC reports that mandating longer sentences, leading to more jury trials and appeals of convictions, may increase the work done by the courts and require additional resources.

The AGO also reports that the legislation would “place heightened duties upon the court to advise defendants entering into plea agreements of the statutory minimum otherwise resulting in appellate rejection of otherwise valid and appropriate plea agreements in cases where the sentencing court fails to adequately advise a defendant that if he or she pleads guilty to a serious violent offense the court would be required to impose a sentence of incarceration equaling at least 85 percent of the statutorily prescribed basic sentence.”

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The AGO expressed concern that the legislation may conflict with Section 31-18-15.1, which allows a sentencing court to depart up to 1/3 of a basic sentence when finding mitigating circumstances surrounding the offense or concerning the offender.

HB 60 is related to HB 35. HB 35 prohibits the court from suspending or deferring a habitual offender sentencing enhancement for nonviolent felony offenses.

TECHNICAL ISSUES

The AGO pointed out that the words “a felony offense that is” contained in proposed Section 31-20-3(B) are unnecessary. All serious violent offenses, as defined in Section 33-2-34, are felony offenses.

TMR/jle/al