

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](http://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 02/02/17

SPONSOR Rodella LAST UPDATED \_\_\_\_\_ HJM 2

SHORT TITLE Native American Sentencing Disparity SB \_\_\_\_\_

ANALYST Sánchez

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		None	None	None		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Indian Affairs Department (IAD)

Attorney General’s Office (AGO)

New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

House Joint Memorial 2 requests the United States Congress to address disparities in sentencing and time serve in prison for individuals convicted in federal court versus state courts and the resulting impact on Native Americans. The title includes “people of color”; the text of the joint memorial does not.

### SIGNIFICANT ISSUES

The United States Sentencing Commission in its Quick Facts Sheet (2009 – 2013) reports that:

- Native American offenders account for a small, but increasing portion of federal offenders. The number of Native American offenders has increased by 27.2 percent over the last five years.
- For each of the past five years, Native American offenders were sentenced within the guideline range more than half of the time (56.3 percent in fiscal year 2009 and 54.3 percent in fiscal year 2013).

## House Joint Memorial 2 – Page 2

- The average sentence imposed on Native American offenders has remained relatively constant over the last five years, from 52 months in fiscal year 2009 to 49 months in fiscal year 2013.

The statistics below provide an insight into Native American incarceration and crime:

- Native Americans are incarcerated at a rate 38 percent higher than the national average (Bureau of Justice Statistics).
- Native American youths are 30 percent more likely than whites to be referred to juvenile court than have charges dropped (National Council on Crime and Delinquency).
- Native Americans are more likely to be killed by police than any other racial group (Center on Juvenile and Criminal Justice).
- Native American men are incarcerated at four times the rate of white men (The Lakota People's Law Project).
- Native American women are incarcerated at six times the rate of white women (The Lakota People's Law Project).
- Native Americans fall victim to violent crime at more than double the rate of all other US citizens (Bureau of Justice Statistics).

The Indian Affairs Department (IAD) reports that Native American offenders in the federal criminal system account for a small portion of federal offenders. IAD cites the 2015 United States Sentencing Commission data which showed Native Americans accounted for 2 percent of all offenders and 3.3 percent of United States citizen offenders. Native Americans were involved in 1,265 cases of the 71,003 cases reported to the United States Sentencing Commission in fiscal year 2015. The District of New Mexico, on the top five districts for Native American federal offenders, accounted for 94 cases.

The US Sentencing Commission report also showed the majority of Native American offenders were sentenced to imprisonment (88.2 percent) and of those, a mandatory minimum penalty applied to 7.4 percent; this is a third of the rate of offenders as a whole (22.2 percent). The average sentence length for Native American offenders was forty-six (46) months; those convicted of an offense carrying a mandatory minimum penalty was one hundred twenty-five (125) months. Native American offenders received a below range sentence sponsored by the government in the Early Disposition Program in 14.1 percent; in 2015, offenders received an average reduction in their sentence of 52.4 percent. Substantial assistance departures were granted in 7.4 percent of cases involving Native American offenders, reducing sentences on average of 57.1 percent.

The crime rate for New Mexico in FY 2014 is about 54 percent higher than the national average rate. The most current statistics (2013) reported in the New Mexico Corrections Department Strategic Plan shows that the Native American prison population was 496 men and 55 women.

## TECHNICAL ISSUES

The New Mexico Attorney General's Office (AGO) states that the inclusion in the bill's title of "people of color" as suffering from sentencing disparities may seem inclusive and, therefore, harmless. However, the inclusion of people of color who are not tribal people may confuse the issue the memorial raises, as the memorial does not ask for redress of racial sentencing bias but instead, asks Congress and other to resolve problems and disparities that result from applying

**House Joint Memorial 2 – Page 3**

state and federal law under separate sovereigns. Although Native American people may be identified as people of color, the memorial addresses disparities that result from structural legal problems rather than from racial bias.

ABS/al/jle