

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 1/29/18
LAST UPDATED _____

SPONSOR Maestas **HB** 120

SHORT TITLE Sentence Enhancement for Certain Crimes **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|--|--|--|---------------------------|---------------|
| Total | | Indeterminate Increase See Fiscal Implications | Indeterminate Increase See Fiscal Implications | Indeterminate Increase See Fiscal Implications | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB18, HB19, HB 25, HB28, HB29, HB50, HB118

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Defender Department (PDD)
- Administrative Office of the District Attorneys (AODA)
- New Mexico Attorney General’s Office (NMAG)
- New Mexico Sentencing Commission (NMAC)

SUMMARY

Synopsis of Bill

House Bill 120 (HB120) proposes to add a new section to the Criminal Sentencing Act adding a penalty for intentional injury to a person 60 years of age or older or a person with a disability while committing a noncapital felony. Should an injury to a person 60 years of age or older or with a disability occur, the basic penalty in Section 31-18-15 NMSA 1978 may be increased by three years. The bill also defines disability.

Additionally, the bill amends Section 31-18-16 NMSA 1978 removing various enhancements to the basic sentence if a firearm is involved to simply adding three years to the basic sentence of a noncapital felony.

The effective date of the provisions in this bill should it become law is July 1, 2018.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) and the Administrative Office of the District Attorneys (AODA) agree 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. These additional costs are not capable of quantification.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,776 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

SIGNIFICANT ISSUES

The New Mexico Attorney General's Office (NMAG) states that the requirement in this bill dealing with the aged or disabled treats these victims differently than other victims. Under this bill for a jury to make a finding required by this law it requires that the State present evidence of age and/or disability, which may be difficult since the information is sensitive and will have to be requested of the family of an elderly or disabled victim who may have died as a result of the crime. NMAG further notes that Section 31-18-15.1 NMSA 1978 already contemplates mitigating and aggravating circumstances, which a judge may take into consideration to alter a basic sentence.

With regard to the substitution of "may" for "shall", NMAG opines that this bill makes it a non-mandatory enhancement if a firearm is used during the commission of a crime. When a firearm is used in the commission of a crime, there is a significant higher chance that it will result in the death or serious injury of a person. This is the reason for the requirement of the current enhancement. The purpose is deterring the use of such a deadly weapon in the commission of a crime. In addition, as this bill is currently written, taking out the increased penalties for each subsequent noncapital felony in which a firearm is used decreases the deterrence to criminals for any subsequent crimes that may be perpetrated. Lastly, changing the language from "shall" to "may" increases the likelihood that each firearm enhancement will be treated differently upon sentencing. There is some potential conflict as to the title of the proposed legislation as it may on its face look to enhance penalties for certain crimes and what it actually proposes to do in the language is to potentially decrease the penalty for committing crimes when armed with a firearm.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- NMCD:
 - Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
 - Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;
 - Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test;
 - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months; and
- District Courts:
 - Cases disposed of as a percent of cases filed;
 - Percent change in case filings by case type;
- District Attorneys:
 - Average caseload per attorney;
 - Number of cases prosecuted;
 - Number of cases prosecuted per attorney;
- Public Defenders:
 - Percent of cases taken by contract attorneys;
 - Percent of cases that go to trial with clients defended by contract attorneys.

ADMINISTRATIVE IMPLICATIONS

AOC believes this bill will have an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law. Since the bill would remove the mandatory aspect of the firearm enhancement under Section 31-18-16 NMSA 1978, changes may need to be made to the Judiciary's statewide case management system to reflect this change. Any changes would require time to train judges and staff in how to apply and implement the new law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to

HB18 Three Strikes Enhancement
HB 19 Increase Penalty for Felon with a Firearm
HB25 Increased Penalty for Felon with Firearm
HB28 Violent Felonies for Sentencing
HB29 Sentencing for Firearms in Noncapital Felony
HB50 Homicide & Bodily Harm by Boat
HB112 Increase 2nd Degree Murder Penalties
HB118 Change Firearm Violation Classification

ABS/jle