

FISCAL IMPLICATIONS

According to AOC, firearm enhancement cases take up a considerable amount of judicial time because the district courts have to conduct not only a trial, but a sentencing phase as well. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase. AOC also notes that increasing the mandatory enhancement by several years is so severe that many accused persons will 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. According to AOC, these additional costs are not capable of quantification.

LOPD states that while it would be able to absorb some increase in cases under the proposed law, cases with higher penalties tend to go to trial more often. Any increase in LOPD expenditures brought about by the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

NMSC states that although HB 35's potential effect on the state's prison population is difficult to determine, the bill would likely lead to more people being incarcerated by the Corrections Department. According to NMSC, the average per day cost to incarcerate someone in the state's prison system is \$110.74/day; this average includes private and public facilities.

NMCD notes that the fiscal impact HB 35 is difficult to estimate. The bill increases sentencing for first and second time uses of firearms in noncapital felony cases, which could result in longer sentences for repeat offenders as well as first time offenders. A moderate increase in population could be anticipated based on the increase in imprisonment sentences for individuals convicted of use of a firearm in noncapital felony cases. According to NMCD, the average annual cost to incarcerate a single inmate is \$40,419. This includes state and private institutions. This also includes all classification of inmates. Classification is determined by inmate's custody levels, and costs vary based on custody levels and particular facilities. The cost per client in Probation and Parole averages out to \$3,566 annually. This includes Community Corrections programs, standard supervision, and intensive supervision programs.

SIGNIFICANT ISSUES

AOC notes that that the imposition of longer, enhanced sentences may spur more defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

LOPD notes that the bill may permit sentence enhancements multiple times in a single case. For example, a drunken person might waive a gun at five people standing together. Under current New Mexico case law, this might result in five convictions for aggravated assault, each of which can be separately enhanced under Section 31-18-16. Assuming five convictions, the person's sentence would be enhanced by three years per count (if it were a first offense) for a total enhancement of 15 years, or a total of 25 years if it were a second firearm offense. LOPD explains that people are frequently convicted of multiple felonies for single acts in this manner due to the proliferation of criminal statutes. The New Mexico Supreme Court has declared that multiple enhancement in a single case (which may comprise of more than one felony) is the intent of the legislature. *State v. Boraz*, 2017-NMSC-030, ¶ 27. Consequently, according to LOPD, if the Legislature intends the enhancement in Section 31-18-16 to be used only once per

case (even though multiple felony counts are charged) then it should clarify that intent.

PERFORMANCE IMPLICATIONS

According to AOC, HB 35 may impact the courts' performance-based budgeting measures, which may result in a need for additional resources. For example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

ADMINISTRATIVE IMPLICATIONS

AOC states that the bill may have an administrative impact on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

OTHER SUBSTANTIVE ISSUES

According to LOPD, there is no research finding that increasing penalties has a deterrent effect on the commission of crimes. This suggests that the sentence enhancements proposed by HB 35 would, at most, lead to more people being incarcerated and longer prison terms, which would increase costs and population in state correctional facilities.

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