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FISCAL IMPACT REPORT

SPONSOR Rehm/Lord/Reeb LAST UPDATED _____
ORIGINAL DATE 1/31/2023
BILL
SHORT TITLE Additional Violent Felonies NUMBER House Bill 58
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY30	FY40	FY50	21 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Costs to NMCD	\$47.9	\$579.6	\$1,084.7	\$12,144.1	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to Senate Bill 29
Conflicts with Senate Bill 64

Sources of Information

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
New Mexico Attorney General (NMAG)
Sentencing Commission (NMSC)
Corrections Department (NMCD)
Department of Public Safety (DPS)

SUMMARY

Synopsis of House Bill 58

House Bill 58 (HB58) proposes to amend Section 31-18-23 NMSA 1978 regarding life imprisonment for offenders convicted of a third violent felony. Currently, five types of crimes are classified as violent felonies for purposes of this law, and conviction for a third violent felony requires life imprisonment. HB58 proposes to add an additional 12 types of crimes and expand the scope of two of the existing crime types, as outlined in Table 1 (below).

The bill further removes the possibility of parole upon a third conviction for any of these offenses, except for medical or geriatric parole. Currently, individuals who are convicted of a third violent felony under this statute are eligible for parole.

The bill also provides for violent felony convictions incurred under the age of 18 to be considered for the purposes of the “three strikes” if in those convictions the youth was sentenced as an adult in New Mexico or in another state for a comparable violent felony. Currently, a violent felony conviction incurred before a defendant reaches 18 does not count as a violent felony conviction under Section 31-18-23 NMSA 1978.

Table 1: Expansion of Violent Felony Definition under HB58

Currently Included	Expanded Scope	Additional Crimes
Criminal sexual penetration of a child under 13, by the use of force or coercion that results in great bodily harm or great mental anguish, during the commission of any other felony, or when the perpetrator is armed with a deadly weapon <i>(1st or 2nd degree felony)</i>	All other criminal sexual penetration perpetrated through the use of force or coercion <i>(2nd or 3rd degree felony)</i>	Voluntary manslaughter <i>(3rd degree felony)</i>
Armed robbery resulting in great bodily harm <i>(1st or 2nd degree felony)</i>	Robbery while armed with a deadly weapon (no great bodily harm necessary) <i>(1st or 2nd degree felony)</i>	Involuntary Manslaughter <i>(4th degree felony)</i>
First and second degree murder <i>(1st or 2nd degree felony)</i>		Aggravated battery resulting in great bodily harm, with a deadly weapon, or in a manner in which great bodily harm or death can be inflicted <i>(3rd degree felony)</i>
Shooting at or from a motor vehicle resulting in great bodily harm <i>(2nd degree felony)</i>		Shooting at a dwelling or occupied building inflicting great bodily harm <i>(2nd degree felony)</i>
Kidnapping resulting in great bodily harm upon victim by captor <i>(1st degree felony)</i>		Aggravated battery against a household member by inflicting great bodily harm, with a deadly weapon, by strangulation or suffocation, or in a manner in which great bodily harm or death can be inflicted <i>(3rd degree felony)</i>
		Abuse of a child resulting in great bodily harm <i>(1st degree felony)</i>
		Negligent abuse of a child that results in the death of the child <i>(1st degree felony)</i>
		Intentional abuse of a child that results in the death of the child <i>(1st degree felony)</i>
		Aggravated arson <i>(2nd degree felony)</i>
		Aggravated battery upon a peace officer <i>(3rd degree felony)</i>
		Homicide or great bodily harm by vehicle while under the influence of intoxicating liquor, under the influence of any drug, driving recklessly, or resisting, evading, or obstructing an officer <i>(2nd or 3rd degree felony)</i>
		Injury to pregnant woman by vehicle while under the influence of intoxicating liquor, under the influence of any drug, driving recklessly, or resisting, evading, or obstructing an officer <i>(3rd degree felony or misdemeanor)</i>

The act applies to people who have been convicted on, before, or after July 1, 2023, of one of the violent felonies described in the act for the purpose of determining sentencing enhancements pursuant to that section for subsequent violent felony convictions on or after July 1, 2023.

The effective date of this bill is July 1, 2023.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons, consequently increasing long-term costs to the general fund. Longer sentences are expected to result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities.

Analysis from the Sentencing Commission (NMSC) estimates HB58 would result in the incarceration of an additional 27 offenders serving life sentences over the first 15 years of the bill's implementation. If on the third conviction for one of these crimes, the offender was subject to a 30-year sentence, NMSC estimates the average time from sentence to release would be 25.5 years, if an offender earned all available meritorious deduction. This would be an increase of 20.4 years over an average 5.1-year term. For more details on this analysis, see Attachment 1.

Because this bill would effectively increase the length of stay for an already existing crime, the impact of this bill would not begin to be realized until after the term of that sentence would otherwise be completed and those offenders released. If, after 5.1 years, these offenders are instead kept in prison an additional 20.4 years, incarceration costs would be impacted beginning in FY30.

Assuming a similar rate of eligible offenders as NMSC found in its analysis in future years, an average about two offenders would be sentenced under this bill each year. As additional inmates are admitted and previously admitted inmates remain incarcerated over the next 20.4 years, annual incarceration costs will increase from \$47.9 thousand in FY30 to \$1.1 million in FY50, at which point inmates would begin being released, leading to relatively steady ongoing costs in future years. In the first 26 years of its implementation, HB58 would result in an estimated \$12.1 million in additional incarceration costs. Over the next 26 years, that cost would grow to \$28.2 million.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis, but could be significant. The Administrative Office of the Courts notes specifically that life imprisonment cases take up a considerable amount of judicial time.

SIGNIFICANT ISSUES

Public Safety Considerations. Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful to community safety. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team has found in the 2nd Judicial District (Bernalillo County) that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and when felonies rose in 2020, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.

The Public Defender Department (PDD) points out a third felony offense is already subject to a mandatory four-year mandatory sentencing enhancement, which applies to each felony in a new proceeding, sometimes resulting in 12 to 16 years of enhancements.

PDD notes several of the offenses HB58 proposes to add to the definition of “violent felony” do not indicate a violent nature or proclivity for violence. Some do not necessarily require physical harm to have occurred, including armed robbery and third-degree aggravated battery. Additionally, PDD raises objections to the inclusion of voluntary and involuntary manslaughter, writing:

While voluntary manslaughter involves intentional conduct, it is defined by the existence of “provocation,” which is what makes it different from “murder.” In other words, it is commonly understood that a person who is not necessarily or otherwise inclined to violence, acted violently because the victim put them into a highly provoking situation. Thus, this offense does not evidence a person’s “proclivity for violence.”

Even more troubling, *involuntary* manslaughter essentially constitutes death resulting from criminal negligence. Negligent behavior – while it can be dangerous and may warrant criminal punishment – does not carry with it the level of culpability associated with heedlessly violent behavior, nor does it evidence a person’s “violent nature.”

PDD adds a similar rationale applies to injuries from car crashes, which fall under the scope of criminal negligence crimes.

Legal Considerations. The office of the New Mexico Attorney General raises the following legal considerations:

As drafted, the bill potentially implicates two major decisions issued by the United States Supreme Court regarding offenders who commit crimes while under the age of 18. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Supreme Court struck down a state statute requiring a mandatory sentence of life imprisonment without the possibility of parole for a juvenile convicted of a homicide as violative of the Eighth Amendment of the U.S. Constitution prohibiting cruel and unusual punishment. The opinion held that state laws cannot require a mandatory life sentence without parole and must allow trial courts to consider alternative punishments. Specifically, the opinion held that a trial court can only impose life

imprisonment without parole after conducting a full hearing on the circumstances of the offense and on the juvenile’s background and particular characteristics. The Court also held in *Graham v. Florida*, 560 U.S. 48 (2010), that sentencing a juvenile to life imprisonment without the possibility of parole for a non-homicide crime violates the Eighth Amendment. *Graham* requires that for any non-homicide crime, a juvenile must be given a “meaningful chance” for parole.

House Bill 58 does not specify whether it applies only to adults or also to juveniles sentenced as adults. The text simply says that any “defendant” convicted of a third “violent felony” would be subject to the mandatory imposition of life imprisonment without the possibility of parole. Theoretically, HB58, as written, could apply to a person under 18 years of age, convicted as an adult of a crime that, while not involving a homicide, nonetheless qualifies as a “violent felony.” If that juvenile already had two prior (separate) convictions for “violent felonies” for which he had been sentenced as an adult, then he or she would be subject to the mandatory imposition of life imprisonment without the possibility of parole. That sentence possibly would violate the U.S. and New Mexico constitutions. In the case of a homicide as the third crime, the mandatory nature of the sentence could violate *Miller* with regard to juveniles. In the case of a non-homicide as the third crime, the sentence of life imprisonment without the possibility for parole could violate *Graham*. However, these problems could arise only in the case of a juvenile, sentenced as an adult for a third “violent felony” to a mandatory sentence of life imprisonment without parole.

ADMINISTRATIVE IMPLICATIONS

PDD raises the following concern:

...without a discovery/disclosure provision, it is presently unclear whether prosecutors would have to give notice of an intent to punish a qualifying crime with life imprisonment prior to sentencing. The result could be that a case that LOPD would ordinarily refer to its major crime unit for representation by a seasoned, experienced attorney could, without such notice, be handled by an attorney with far less experience.

CONFLICT, RELATIONSHIP

Conflicts with Senate Bill 64, which would provide that no juvenile may be sentenced to life imprisonment without the possibility of parole and, additionally, would make differing amendments to Section 31-18-23 NMSA 1978.

Relates to Senate Bill 29, which amends the system for medical and geriatric parole. Since the only exceptions to the ban on parole for certain offenders proposed by HB58 is cases of medical or geriatric parole, any changes to that system could impact the number of offenders who would or would not be subject to this ban.

Attachments

1. NMSC Analysis of HB58 Sentence Length and Population Impact

NMSC Analysis of HB58 Sentence Length and Population Impact

In late 2015, the Sentencing Commission (NMSC) ran a simulation assessing the possible impacts of three strikes legislation similar to House Bill 58. The results of that simulation are below.

Simulation of Number of Offenders 2000-2014

To determine the impact of expanding the list of qualifying offenses subject to mandatory life imprisonment for three violent felony convictions, NMSC used data provided by the courts to run a simulation. Table 1 contains the list of charges that were used in the analysis.

Table 1. Charges

First Degree Murder
Second Degree Murder
Manslaughter
3rd Degree Aggravated Battery
2nd Degree Shooting at a Dwelling or Occupied Building
2nd Degree Shooting at or from a Motor Vehicle
3rd Degree Aggravated Battery on a household member
Kidnapping with great bodily harm
1st Degree Child Abuse Intentional
1st - 3rd criminal sexual penetration
1st or 2nd Robbery
Aggravated Arson
Aggravated Battery Upon a Peace Officer
Homicide by Vehicle or Great Bodily Harm by Vehicle
Injury to Pregnant Woman by Vehicle

NMSC has data on court cases disposed from 2000 – 2014. For the simulation, NMSC tried to determine the effect if the law had been changed in 2000 to include the charges above. NMSC selected all cases that had a conviction on any of the above charges from 2000 – 2014. NMSC then counted the number of convictions by offender. Over the 15-year period, 8,977 individuals were convicted for one of the charges at least once. Table 2 contains the number of individuals that were convicted once, twice, or three times or more over the 15-year time period. The percentage of offenders who had three or more convictions was 0.3 percent. This would yield an estimated additional 27 offenders in NMCD serving life sentences over the first 15 years of the statute's implementation. There were 386 offenders who had two convictions during the time period on these charges (4.3 percent).

Table 2. Number of Offenders by Number of Convictions

Once	8,564	95.4%
Twice	386	4.3%
3 times or more	27	0.3%
Total	8,977	100.0%

Estimating Differences in Sentence Lengths

To estimate the difference in sentence lengths, NMSC used NMCD release data. NMSC looked at the average time from sentence date to release date for each of the charges. NMSC found the averages varied widely by charge; ranging from 2-19.5 years. It is important to note that this average does not include any pre-sentence confinement credit so the actual amount of time served

NMSC Analysis of HB58 Sentence Length and Population Impact

is probably higher.

NMSC then calculated the weighted average, which takes into account the number of offenders who served time for each charge relative to the total number. For example, first degree murder has the longest average however there are fewer offenders who serve time on that charge compared to a charge like third degree aggravated battery which has a large number of offenders and a significantly shorter average sentence to release length. The weighted average from sentence date to release date across all these crimes was 5.1 years. If upon the third conviction for one of these crimes, the offender was subject to a 30-year sentence, NMSC estimates that the average time from sentence to release would be 25.5 years, if an offender earned all available meritorious deduction. This would be an increase in sentence of 20.4 years.