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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/18

SPONSOR Nibert/Rehm/Montoya LAST UPDATED _____ HB 91

SHORT TITLE Alteration of Sentence 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 Increases See Fiscal Implications	Indeterminate Increases See Fiscal Implications	Indeterminate Increases See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates HB18, HB19, HB25, HB28, HB29, HB54, HB112, HB118

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

House Bill 91 proposes to add a new section to the Criminal Sentencing Act which adds not less than two year but not more than five years to the sentence of a person who committed a felony and the person is on probation or parole, was released from jail, or had escaped from confinement.

The bill also adds not less than 30 days and not more than six months to the sentence of a person convicted of a misdemeanor, if the person was on probation and parole, was released from jail or prison or escaped from jail or prison.

The bill defines “released from confinement” as a person released from jail or prison on their own recognizance, on a secured or unsecured bond, is on furlough, work release or subject to court-ordered conditions of release, including pre-trial services or a community corrections

program.

Upon a finding by the court or a jury that the person committed a felony or misdemeanor, the court shall impose the sentence which cannot be suspended or deferred.

FISCAL IMPLICATIONS

The Public Defender Department (PDD) anticipates a need for additional appropriations should this bill become law. Although it does not annualize the cost, PDD does provide the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund annual operating budget to add one attorney is \$175.1 thousand per year.

The Administrative Office of the Courts (AOC) and the Administrative Office of the District Attorneys (AODA) state that as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury, which will require additional resources; however the additional costs cannot be quantified.

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 \$44,779 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.

The cost to monitor offenders on a standard caseload is \$7.89 per offender per day. However, without an estimated average number of offenders being monitored whose offense is similar to the one in this bill, the cost to the NMCD Probation and Parole Division cannot be quantified.

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

AOC believes that the bill's sentence enhancements may run counter to the double jeopardy clauses of the United States and/or New Mexico constitutions. Those clauses, in both

constitutions, prohibit multiple punishments for the same offense. If conviction of a felony would already lead to a sentence enhancement under Section 31-18-23 NMSA 1978 for a habitual offender, to add an additional, double enhancement under the circumstances specified in HB 91 could run counter to the double jeopardy clauses. This double jeopardy issue could be litigated and cause multiple appeals, creating more work for the courts, thus requiring more resources needed to handle the increase in caseload.

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

AODA states that a jury will need new jury instructions when it is making its findings as required by the bill.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to:

HB18 Three Strikes Enhancement
HB19 Increase Penalty For Felon With Firearm
HB25 Increased Penalty For Felon With Firearm
HB28 Violent Felonies For Sentencing
HB29 Sentencing For Firearms In Noncapital Felony
HB54 Increase DWI Penalties
HB112 Increase 2nd Degree Murder Penalties
HB118 Change Firearm Violation Classification
HB120 Sentencing Enhancement For Certain Crimes

TECHNICAL ISSUES

AODA points out that “release from confinement” may need additional clarification. The New Mexico Attorney General’s Office (NMAG) suggests that the phrase in Paragraph (2) of Subsections A, B and D “whether the confinement related to the felony/misdemeanor or a previous charge or conviction” be removed because the confinement cannot be related to the felony or misdemeanor that is presently being committed if the person was released.

OTHER SUBSTANTIVE ISSUES

New Trends in State Sentencing and Corrections 2014-2015, May 2016, Vera Institute of Justice, reported that a growing body of research demonstrating that:

- longer sentences have no more than a marginal effect in reducing recidivism and shorter sentence lengths do not have a significant negative impact on public safety;
- many people can be safely and effectively supervised in the community rather than in custody at lower cost;
- post-punishment penalties and restrictions (the collateral consequences of criminal conviction) hinder people upon release from prison or discharge from community supervision in addressing known risk factors for reoffending—such as mental illness, substance-abuse problems, lack of vocational skills, education, and housing—with now well-understood impacts on their families and communities.

According to AOC, the trend has been to reserve sentence enhancement application for the most serious crimes, the most serious offenders, which HB91, in enhancing the basic sentence of imprisonment for those convicted of a felony and the specified misdemeanor offenses, appears to do.

ABS/al