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FISCAL IMPACT REPORT

SPONSOR Rehm ORIGINAL DATE 2/13/2021
LAST UPDATED _____ HB 58
SHORT TITLE Additional Violent Felonies SB _____
ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY27	FY28	FY29	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$37.7	\$79.6	\$121.6	\$238.9	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with Senate Bill 114

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Public Defender Department (PDD)
Attorney General's Office (NMAG)
Sentencing Commission (NMSC)
Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 58 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; 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 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>

HB58 includes a two-part qualifier to life imprisonment by stipulating eligibility for a parole hearing if the inmate has served 10 or more years and is 60 years old or older, with the provision the parolee be supervised for the rest of their life.

The act applies to people who have been convicted on, before, or after July 1, 2021, 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, 2021.

The effective date of this bill is July 1, 2021.

FISCAL IMPLICATIONS

Increasing sentencing penalties will likely increase the population of New Mexico’s prisons and long-term costs to the general fund. Increased sentence lengths decrease releases relative to the

rate of admissions, pushing the overall prison population higher. 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.

The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY20 was \$44.8 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 \$23.3 thousand per inmate per year across all facilities. Based on this marginal cost estimate, the individual fiscal impact per inmate of HB58 would be \$475 thousand across the prison sentence.

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 FY27.

Assuming a similar rate of eligible offenders as NMSC found in its analysis in future years, an average of slightly under 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 \$37.7 thousand in FY27 to \$855.1 thousand in 2047, 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 \$9.6 million in additional incarceration costs. Over the next 26 years, that cost would grow to \$22.2 million.

The Administrative Office of the Courts (AOC) explains that HB58's amendments increasing penalties are likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Indigent offenders are entitled to public defender services. AOC adds that life imprisonment cases take up a considerable amount of judicial time. Expanding the list of violent felonies for a "three strikes" case may increase the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increased workload.

The Administrative Office of the District Attorneys (AODA) also notes the possibility of increased trials under this bill, requiring additional resources for district attorneys, public defenders, courts, and corrections.

PDD notes that, since a mandatory life sentence is at issue, a person charged with a third qualifying felony would be much more likely to demand a full trial in the hopes of either acquittal or at least conviction of a lesser included offense that would not trigger a life sentence. This bill would significantly increase the number of such trials. Such an increase in cases going to trial – for cases that, due to their seriousness, often involve more complex trials than others – would certainly impact resources of PDD and those of the courts and district attorneys, as well. However, it is impossible to predict the number of such eligible charges or to quantify the number of these additional felonies would constitute third offenses for LOPD clients.

SIGNIFICANT ISSUES

The Administrative Office of the District Attorneys (AODA) expresses concerns that adding involuntary manslaughter to the list of violent felonies for purposes of the three strikes law is problematic because involuntary manslaughter is an unintentional killing of another. As an example, AODA explains a person cleaning or tinkering with a firearm in the presence of another could be convicted of involuntary manslaughter if the firearm fires and the other person is killed. The agency states this is not an intentional killing but is done in a manner that disregards the safety of others. AODA thinks this likely will be challenged, and it is highly likely the courts will strike it.

PDD raises the following issues:

The presumed purpose of Section 31-18-23, is to target individuals who themselves have shown a “violent nature,” or “proclivity for violence,” so that the safety of the community justifies a life sentence for a crime that otherwise does not carry a life sentence. With that in mind, HB58 does make an effort to maintain the physical harm component in defining “violent felonies.” However, there are a few proposed additional offenses whose inclusion reaches beyond the type of offense this enhancement is designed to address.

Armed robbery is essentially a specific form of assault. It is the use of a *threat* of violence to steal from someone, where a weapon is used. Again, noting that almost any object can be considered a deadly weapon, not all armed robberies involve physical harm whatsoever. Thus, maintaining the statute’s current great bodily harm requirement is vital to maintaining the statute’s purpose.

Similarly, third-degree aggravated battery (whether the general version, against a household member, or against a peace officer) does not inherently require injury at all, as the deadly weapon alternative carries no such requirement. Particularly because the term “deadly weapon” can include extremely innocuous objects, limiting the “violent offense” definition to those batteries resulting in great bodily harm better achieves the goal of Section 31-18-23, which is to identify individuals with a proclivity for extreme violence.

All homicides result in the death of a human being. Nevertheless, within “homicide,” there is essentially a four-tier structure for culpability, which is premised on the intentions of the actor, and the relative sentences reflect a societal recognition that not all deaths are murder. Section 31-18-23 already includes both first and second degree murder. However, HB 58’s proposed addition of manslaughter is highly problematic.

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.”

This rationale similarly applies to negligent child abuse, which HB58 proposes to include as a “violent felony.” To be considered a “violent” crime triggering the life sentence, only intentional child abuse addresses the type of violent individual the statute is concerned with.

Similarly, injuries from car crashes are not intentional acts falling within the scope of “violent” behavior this statute is targeting. These crimes fall under the scope of criminal negligence crimes. Without minimizing their inherent seriousness, and noting that when committed under the influence, they are subject to their own enhancements often resulting in very lengthy sentences, these offenses do not coincide with a violent nature or proclivity for violence.

Finally, third-degree aggravated battery does not inherently require injury at all, as the deadly weapon alternative carries no such requirement.

In addition to the inclusion of certain felonies as “violent” felonies, where a life sentence is given as an enhancement incurred for three separate events, where each crime alone would not have warranted such a severe penalty, parole eligibility should be maintained. HB 58 makes such inmates *ineligible* for parole *unless* they have served 10 years of the life sentence and are over 60 years old. Because whether to grant or deny parole will be case-specific and at the discretion of the parole board, an “or” might be more appropriate. If an inmate must be sixty years old, to even be considered, a defendant could be sentenced to life under Section 31-18-23 while in their 20s, and then would not become eligible for parole until after serving *more* than 30 years, which is an even more restrictive parole eligibility than the life sentence for first-degree murder. *See* Section 31-21-10(A) (eligible after 30 years).

The following analyses were submitted in prior years in response to similar “three strikes” bills:

AOC previously explained:

A report titled *Impact of Three Strikes and Truth in Sentencing on the Volume and Composition of Correctional Populations*¹ produced under funding from the U.S. Department of Justice and published in March of 2001 states, “Three Strikes was found to have no statistically significant nationwide impacts on any of the dependent variables that were studied, except for exits from parole, which appeared to grow about 8.7 percent faster after the law was implemented. These findings are not surprising, since the Three Strikes laws passed in most states are seldom used, or not used at all.”

The Legislative Analyst’s Office, a California nonpartisan policy group published *A Primer: Three Strikes – The Impact After More Than a Decade*² in 2005 where they reported, “In 1994, analysts predicted that Three Strikes would result in over 100,000 additional inmates in state prison by 2003. Clearly, that rate of growth has not occurred. A number of factors have

¹ <https://www.ojp.gov/library/abstracts/impact-three-strikes-and-truth-sentencing-volume-and-composition-correctional>

² https://lao.ca.gov/2005/3_strikes/3_strikes_102005.htm#crim%20justice%20system

probably contributed to a lower prison population, including the use of discretion by judges and district attorneys to dismiss prior strikes in some cases. While courts do not track how often such discretion is used, some surveys of district attorneys conducted by Jennifer Walsh of California State University, Los Angeles, for example, suggest that prior strikes might be dismissed in 25 percent to 45 percent of third strike cases, resulting in shorter sentences for those offenders.

From these sources, it seems such expansions are used with little frequency.

AODA previously submitted the following analysis regarding a duplicate bill (2019’s House Bill 103):

Juveniles

House Bill 103 counts juvenile convictions, if the juvenile was sentenced as an adult. Therefore, an act committed when a person was under 18 could lead to a life sentence years later if the person commits two additional dangerous felonies. Currently, a felony committed by a person under 18 does not count under the “three strikes” law, even if the person was sentenced as an adult. The rationale for excluding juvenile convictions from a “three strikes” law is that juveniles are immature, which can lead to rash decision-making; are vulnerable to peer pressure; lack the cognizance to avoid dangerous situations; and their character is still developing. In addition, a mandatory sentence does not allow consideration of the family and home environment that may have contributed to the crime.

Note that the U.S. Supreme Court has prohibited sentencing a juvenile to life without parole (for the reasons discussed above). Under House Bill 103, if a juvenile were convicted as an adult on three violent felonies while still a juvenile, he or she would be eligible for parole at age 60.

Parole

Currently, New Mexico’s “three strikes” law does not allow parole. House Bill 103 provides that a person sentenced under its provisions becomes eligible for parole at age 60 if the person has served at least 10 years of the sentence. If granted parole, the person will be under the guidance and supervision of the board for the rest of his or her life.

Additional felonies

House Bill 103 adds many felonies to the law’s definition of “violent felony,” so many more defendants may be subject to the “three strikes” law.

The Attorney General (NMAG) previously suggested the bill provides “additional grounds for prosecutors to seek sentence enhancements for violent offenders.” NMAG suggests other offenses that may fairly be considered “violent” which the drafters may want to consider adding to the definition of violent felony are (1) third degree robbery, § 30-16-2, (2) criminal sexual contact, § 30-9-12(A), and criminal sexual contact of a minor, § 30-9-13.

NMSC stated New Mexico’s three strikes law (Sections 31-18-23 and 31-18-24 NMSA 1978) was enacted in 1994. Section 31-18-24 NMSA 1978 (not included in House Bill 103) sets forth

sentencing procedures if a three strikes sentencing enhancement is pursued:

“31-18-24. Violent felony sentencing procedure.

- A. The court shall conduct a separate sentencing proceeding to determine any controverted question of fact regarding whether the defendant has been convicted of three violent felonies. Either party to the action may demand a jury trial.
- B. In a jury trial, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge before the original trial jury. In a nonjury trial, the sentencing shall be conducted as soon as practicable by the original trial judge. In the case of a plea of guilty, the sentencing proceeding shall be conducted as soon as practicable by the original trial judge or by a jury upon demand of the defendant.
- C. In a jury sentencing proceeding, the judge shall give appropriate instructions and allow arguments. The jury shall retire to determine the verdict. In a nonjury sentencing proceeding, or upon a plea of guilty where no jury has been demanded, the judge shall allow argument and determine the verdict.”

NMSC staff reviewed available New Mexico criminal justice data and were unable to find an instance when an offender received a three strikes sentencing enhancement. NMAG concurred:

The three strikes enhancement has rarely been filed in the State of New Mexico because the definition of violent offense has been limited to a very small set of criminal convictions. Research has shown that nobody in the State of New Mexico was sentenced under this statute. Adding thirteen additional convictions to the definition should increase the amount of three-strike prosecutions.

Roughly half of the states have enacted some form of three strikes statutes, with most enacting them around the time New Mexico did in 1994. The most recent was Massachusetts in 2012. Notably, that same year California voters passed Proposition 36, which provides that a three strikes life sentence can only be imposed if the third felony is serious or violent; this was significant because the California three strikes law was in many ways the model for the national discourse on these laws. Most states have modified, sometimes extensively, their three strikes laws since they were initially adopted.

New Mexico has had habitual offender sentencing enhancements since 1977. The statutory provisions are set forth at Sections 31-18-17 NMSA 1978 through 31-18-20 NMSA 1978.

Many states, including New Mexico, have adopted “truth in sentencing” laws. Such laws typically require “serious violent offenders” to serve not less than 85 percent of their sentence. NMSC produces an annual report on time served and earned meritorious deductions that includes information on time served by serious violent offenders in New Mexico.

PDD previously expressed concern that “New Mexico has many felonies that are broadly worded enough to include both violent and nonviolent conduct; the bill does not make the distinction to target only people who commit crimes in a violent way, and thus evidence a recidivist tendency justifying life in prison in order to protect the community.” PDD stated the lack of definition may sentence criminals who are not violent and may not warrant a life sentence.

PDD previously provided examples of the broad nature of the bill, including the following:

Kidnapping can include holding someone by the arm to make them take money out of an ATM. The bill does not limit itself to first degree kidnapping, and second degree kidnapping is defined as simply restraint with a particular intent; no actual harm need be suffered. Furthermore, even first degree kidnapping involves only “injury,” and not great bodily harm, so that a scratch or bruise would suffice to be considered “violent” under this bill.

LOPD is concerned that accruing offenses eligible under the broad categories of the bill could quickly and unnecessarily sentence someone to life in prison.

PDD previously stated, “Maintaining the great bodily harm requirement for all offenses that do not inherently require it is the best way to focus on individuals who repeatedly behave in a violent manner, and not just individuals who recidivate criminally. Section 31-18-17 NMSA 1978 already provides for significant sentencing enhancements for repeat felons, without imposing a life sentence. The life sentence provision should be targeting people whose level of violence justifies an extreme sentence for the safety of the community, recognizing that it is significantly greater than the penalty for any of the individual crimes, particularly where Section 31-18-23 NMSA 1978 does not allow any judicial discretion to find that a particular defendant is not in fact violent or a danger to the community.”

Finally, PDD previously asserted:

The proposed additional felonies, as a third felony offense, would still be subject to a four-year mandatory sentencing enhancement under Section 31-18-17, the habitual offender enhancement statute applicable to all non-capital felonies (a fourth or subsequent felony offense incurs a mandatory eight-year enhancement). Because that enhancement term applies to each felony in a new proceeding, it is a practical reality that habitual offender enhancements in a single case often total 12 or 16 years.

PERFORMANCE IMPLICATIONS

AOC notes the courts are participating in performance-based budgeting. HB58 may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

AOC states there will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CONFLICT, RELATIONSHIP

Conflicts with Senate Bill 114, which replaces the state’s system of medical and geriatric parole with a new system. Under the system in this bill, the minimum age at which an inmate can be

considered geriatric is 55, while the minimum age in current statute is 65 (age is not the sole qualifier for considering an inmate to be geriatric). The only offenders excluded from this system are those convicted of first degree murder, so many of the offenders who could be convicted under HB58 for other offenses would be eligible for parole earlier than specified by this bill under the system created by SB114.

Relates to House Bill 59, which amends Section 31-18-17 NMSA 1978 to require a prior felony conviction within 25 years of a subsequent felony conviction be considered for the purpose of habitual offender sentencing. Convictions pursuant to Section 66-8-102 NMSA 1978 (Driving Under the Influence) are included as subsequent felony convictions to be considered.

TECHNICAL ISSUES

In its analysis of 2019's House Bill 103, AODA raised concerns regarding the clarity of the applicability section that are also applicable to HB58. The applicability section begins by stating the act applies to persons who have been convicted of one of the violent felonies described in the act (no matter when that conviction occurred) for purposes of determining sentencing enhancements for subsequent violent felony convictions on or after July 1, 2021. It appears that the "first strike" may be a conviction on any date, including a date before July 1, 2021. It also appears that the "third strike" must be a conviction occurring after July 1, 2019. It is not clear whether the "second strike" must also occur after July 1, 2021. It could be read that the first strike conviction may occur at any time, but the second and third strike convictions must occur after July 1, 2021. If that is not the intent of the bill, the intent should be made clear. Additionally, if only the third strike needs to occur after July 1, 2021, it is possible a defendant who *committed* three crimes that were not covered by the "three strikes" law before HB58 could face a life sentence if the *conviction* for that third crime occurs after July 1, 2019.

NMAG raises the following technical and administrative concern:

Among the expanded list of enumerated violent felonies, amended Section 31-18-23(E)(2)(p)(4) adds homicide by vehicle when committed while resisting, evading, or obstructing an officer. It thereby mirrors Section 66-8-101(H), which provides for a greater sentence for homicide by vehicle when the defendant "willfully operates a motor vehicle in violation of Subsection C of Section 30-22-1 NMSA 1978 and directly or indirectly causes the death of or great bodily harm to a human being." Amended Section 31-18-23(E)(2)(q)(4) likewise adds injury to a pregnant woman by vehicle when committed while resisting, evading, or obstructing an officer. However, unlike the homicide by vehicle statute, the injury to a pregnant woman by vehicle statute does not provide for a greater sentence when the offense is committed while fleeing police. *See* NMSA 1978, § 66-8-101.1. As a result, it is unlikely that a judgement and sentence for such a conviction would indicate whether it was committed while fleeing police, making a determination as to whether the conviction qualified as a prior violent felony problematic.

NMCD notes the following potential technical issue:

Page 7, lines 9-17 (§ 2(D)), create a secondary geriatric parole and might be more appropriately located in NMSA 1978, § 31-21-25.1 with the existing geriatric parole procedures. This would require an edit to page 2, lines 6-7 (referencing the inserted paragraph by section).

OTHER SUBSTANTIVE ISSUES

PDD notes that, without a discovery or 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 PDD 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.

NMAG notes the following with regard to juvenile sentencing:

In *Ira v. Janecka*, 2018-NMSC-027, ¶¶ 38-39, our Supreme Court rejected the argument that a 91½ year prison sentence where the defendant would be eligible for parole at age 62 was the functional equivalent of life-without-parole. As a result, the sentence did not violate U.S. Supreme Court precedent prohibiting life-without-parole for non-homicide offenses committed by juveniles. *Id.*; cf. *Graham v. Florida*, 560 U.S. 48, 74 (2010). The Court reasoned that the defendant’s “opportunity to obtain release when he is 62 years old [is] constitutionally meaningful, albeit the outer limit.” *Janecka*, 2018-NMSC-027, ¶ 39.

ALTERNATIVES

PDD states that focusing on crimes that evidence a person’s inherent proclivity for violence is the only way to ensure that a life sentence is imposed in only the appropriate cases, particularly where Section 31-18-23 does not allow any judicial discretion to find that a particular defendant is not in fact violent or a danger to the community. As an alternative, the agency suggests the Legislature could revisit the basic habitual offender statute.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

PDD notes the proposed additional felonies, as a third felony offense, would still be subject to a four-year mandatory sentencing enhancement under Section 31-18-17, the Habitual Offender enhancement statute applicable to all non-capital felonies; a fourth or subsequent felony offense incurs a mandatory eight-year enhancement. Because that enhancement term applies to *each* felony in a new proceeding, it is a practical reality that habitual offender enhancements in a single case often total 12 or 16 years. This would be true even when applied to convictions incurred by persons under eighteen receiving an adult sentence.

Attachments:

1. NMSC Analysis of HB58 Sentence Length and Population Impact

ER/sb

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.