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| LFC Requester: | Jacobs, Henry |
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AGENCY BILL ANALYSIS - 2026 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO

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(Analysis must be uploaded as a PDF)

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 1/26/26 *Check all that apply:*
Bill Number: HB 75 Original Correction
 Amendment Substitute

Sponsor: Rep. Andrea Reeb **Agency Name and Code** AOC
Short Title: Alteration of Basic Sentence **Number:** 218
Based on Circumstances **Person Writing** Celina Jones
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY26 | FY27 | | |
| None | None | Rec. | General |
| | | | |

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|---------|---------|---------------------------|---------------|
| FY26 | FY27 | FY28 | | |
| Unknown | Unknown | Unknown | Rec. | General |
| | | | | |

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY26 | FY27 | FY28 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|---------|---------|---------|-------------------|---------------------------|---------------|
| Total | Unknown | Unknown | Unknown | Unknown | Rec. | General |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 75 amends Section 31-18-15.1 NMSA 1978, within the Criminal Sentencing Act, to require a judge in a noncapital felony case to make a finding of any mitigating circumstances surrounding the offense or concerning the offender, by clear and convincing evidence.

The current statute does not include any particular burden of proof for mitigating circumstances.

FISCAL IMPLICATIONS

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 any challenges to the law's constitutionality, as well as evidence needing to be presented to meet the burden of proof of clear and convincing evidence for mitigating circumstances. 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.

SIGNIFICANT ISSUES

1) Clear and convincing evidence is a very high evidentiary standard.

In *State v. Juan*, 148 N.M. 747, 760 (2010), the court held that the sentencing court may alter the basic sentence for noncapital felonies if the court finds "any mitigating circumstances surrounding the offense or concerning the offender."

Under Section 31-18-15.1(A) NMSA 1978, the judge may alter a basic sentence upon, "a finding by the judge of any mitigating circumstances surrounding the offense or concerning the offender."

While Section 31-18-15.1(A) NMSA 1978 does not provide a standard of evidence for finding mitigating circumstances, the clear and convincing evidence standard is a very high bar. "Clear and convincing evidence is evidence that instantly tilt[s] the scales in the affirmative when weighed against the evidence in opposition and the fact finder's mind is left with an abiding conviction that the evidence is true." *In re Locatelli*, 2007-NMSC-029, ¶ 7, 141 N.M. 755. This is the same standard required to terminate a person's parental rights. *See, e.g., In re Doe*, 1982-NMCA-094, ¶ 31, 98 N.M. 340. Applying what amounts to the second-highest burden of proof in the legal system to a decision that currently carries no burden of proof deserves careful scrutiny.

2) The U.S. Supreme Court has previously addressed this issue and found a burden of proof for mitigation to be unworkable.

The U.S. Supreme Court has explained why applying any particular burden of proof to mitigation is not structurally workable. Justice Scalia wrote, "we doubt whether it is even possible to apply a standard of proof to the mitigating-factor determination." *Kansas v. Carr*, 577

U.S. 108, 119 (2016). On the other hand, “[i]t is possible to do so for the aggravating-factor determination [...] because that is a purely factual determination.” *Id.* Put differently, “[w]hether mitigation exists [...] is largely a judgment call (or perhaps a value call); what one juror [or judge] might find mitigating another might not.” *Id.* This is because “the ultimate question [...] is mostly a question of mercy—the quality of which, as we know, is not strained.” *Id.*

3) The U.S. Constitution requires a burden of proof for aggravation, but not for mitigation.

Section 31-18-15.1 follows this legal track by applying a burden of proof (beyond a reasonable doubt) to aggravating circumstances while leaving mitigation to the sound judgment of a judge without a specific standard of proof. This is not only structurally desirable, but also constitutionally required. In *Apprendi v. New Jersey*, the U.S. Supreme Court held that “any fact that increases the penalty for a crime beyond the prescribed statutory maximum [other than the existence of a prior conviction] must be [...] proved beyond a reasonable doubt.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). The application of the beyond a reasonable doubt standard to aggravation in Section 31-18-15.1 is mandatory under the U.S. Constitution. By the same token, the lack of a specific standard of proof for mitigation may also be based upon U.S. Supreme Court guidance. This dichotomy is likely no accident.

4) Adding a burden of proof may render allocution an empty gesture, creating a risk that sentences imposed will be legally invalid.

New Mexico jurisprudence also places great importance on the right of a criminal defendant to make an allocution prior to imposition of a sentence. “Allocution provid[es] an avenue through which a defendant may ask for mercy based on factors that might not otherwise be brought to the court’s attention.” *State v. Wing*, 2022-NMCA-016, ¶ 22. By imposing a specific burden of proof to mitigating circumstances, which can include the content of a defendant’s allocution statement, there is a risk that allocution could become “no more than an empty gesture.” *Tomlinson v. State*, 1982-NMCA-074, ¶ 11, 98 N.M. 213. That, in turn, creates a major risk that sentences imposed with the newly added standard of proof will be legally invalid, as a failure to provide a defendant a meaningful opportunity to allocute is a jurisdictional error. *See State v. Sotelo*, 2013-NMSC-028, ¶ 21. Allowing a judge to exercise their discretion to weigh mitigating circumstances as they see fit is both procedurally and legally preferable.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. This bill 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

See “Fiscal Implications,” above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS