



## **SECTION III: NARRATIVE**

### **BILL SUMMARY**

#### Synopsis:

Section 1 amends Section 31-18-15.1 entitled “Alteration of Basic Sentence – Mitigating or Aggravating Circumstances – Procedure” to amend Subsection (A)(1) to provide that a finding by a judge of mitigating circumstances must be “by clear and convincing evidence.”

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for this agency.

### **SIGNIFICANT ISSUES**

Section 31-18-15.1(A)(1) currently contains no language on what standard of proof the judge should use before finding mitigating circumstances.

“Clear and convincing evidence” is defined as a standard that

requires proof stronger than a mere ‘preponderance’ and yet something less than ‘beyond a reasonable doubt.’ For evidence to be clear and convincing, it must instantly tilt 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.

*State ex rel. Children, Youth & Families Dep’t. v. Hector*, 2008-NMCA-079, ¶ 11, 144 N.M. 222 (internal citations omitted). It is the standard used for termination of parental rights – *see* NMSA 1978, § 32A-4-29(I) (2022); forfeiture of property following a criminal conviction – *see* NMSA 1978, § 31-27-6 (2002); and appointment of a guardian for an alleged incapacitated person – *see* NMSA 1978, § 45-5-304(C) (2009).

The procedure for finding aggravating circumstances is unchanged and requires proof beyond a reasonable doubt and entitlement to a jury finding because the basic sentence is increased.

### **PERFORMANCE IMPLICATIONS**

None noted.

### **ADMINISTRATIVE IMPLICATIONS**

None noted.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None noted.

**TECHNICAL ISSUES**

None noted.

**OTHER SUBSTANTIVE ISSUES**

None noted.

**ALTERNATIVES**

n/a

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**

n/a