

LFC Requester:

AGENCY BILL ANALYSIS
2023 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original ☒ Amendment ☐
Correction ☐ Substitute ☐

Date 1/21/2026

Bill No: HB 75-280

Sponsor: Rep. Reeb
Short Title: Alteration of Sentence Based on Circumstances

Agency Name and Code LOPD 280
Number:
Person Writing Caitlin Smith
Phone: 505-395-2890 Email caitlin.smith@lopdnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A currently

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 75 would amend NMSA 1978, Section 31-18-15.1, which addresses the procedure for mitigating or aggravating a criminal sentence. Under current law, a trial court may increase a defendant's basic sentence if there are "aggravating circumstances surrounding the offense or concerning the offender" or reduce it if there are "mitigating circumstances." *See* Section 31-18-15.1(A). For an adult defendant, the alteration upward or downward can be up to one-third of the length of the basic sentence; for juveniles, the court can reduce the sentence more. *See* Section 31-18-15.1(G).

The statute specifies that before a judge may increase a sentence, a jury must find the aggravating circumstances beyond a reasonable doubt. The defendant can also waive a jury finding, in which case the judge must make the finding beyond a reasonable doubt. Section 31-18-15.1(A)(2), (B). The reasonable-doubt standard is constitutionally required. *See Apprendi v. New Jersey*, 530 U.S. 466, 476 (2000) (any fact, other than a prior conviction, that increases the maximum penalty for a crime must be proven to a jury beyond a reasonable doubt).

The statute does not currently specify a standard for proving mitigating circumstances. *See* Section 31-18-15.1(A)(1).

HB 75 would change that and require the judge to find mitigating circumstances "by clear and convincing evidence."

FISCAL IMPLICATIONS

It is possible that this bill could increase LOPD workloads by requiring more preparation for sentencing hearings, although realistically, the process of presenting the evidence is unlikely to be notably impacted unless courts begin rejecting mitigation evidence under the new standard, thus requiring more robust presentations involving expert evidence from behavioral health evaluations and/or mitigation specialists more often than is current practice.

SIGNIFICANT ISSUES

The amendment is not necessary, and at worst, it could limit judges' discretion at sentencing.

"Clear and convincing evidence" is a legal term of art. It describes a standard greater than "preponderance of the evidence" (which simply means "more likely true than not true"), but less

than “beyond a reasonable doubt.” See *In re Palmer*, 1963-NMSC-129, ¶ 8, 72 N.M. 305; UJI 13-304 NMRA. “Clear and convincing evidence is evidence that instantly tilts 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 v. Adonis*, 2008-NMSC-059, ¶ 11, 145 N.M. 102 (cleaned up). “Clear and convincing” is a high standard. It is, among other things, the burden of proof required to criminally commit an incompetent person, to hold a defendant in jail before trial, and to terminate parents’ rights to their children. See NMSA 1978, § 31-9-1.5(C) (2025); Rule 5-409(A) NMRA; NMSA 1978, § 32A-4-29(I) (2022); NMSA 1978, § 32A-5-16(H) (2022).

Since the sentencing statute does not currently specify a standard of proof, and there appears to be no case law about the standard that a court should apply to mitigation evidence, courts most likely apply a “preponderance of the evidence” standard: if the defense presents evidence that a mitigating circumstance exists, and the judge believes that it does, the judge can find the circumstance. HB 75 would raise the standard of proof, which might make it harder in some cases for defendants to prove mitigating circumstances, or might make it harder for judges to find mitigating circumstances if there were a factual dispute at sentencing.

However, under existing law, the existence of a mitigating circumstance does not *require* a judge to do anything. Although a judge must consider mitigating circumstances, the judge is free to impose any sentence allowed by law, and a judge is never required to reduce a sentence. See Section 31-18-15.1(A) (“The judge *may* alter the basic sentence” (emphasis added)); *State v. Sotelo*, 2013-NMCA-028, ¶ 45 (“there is no abuse of discretion when mitigating circumstances are considered and rejected”). There is no risk that a defendant could force a judge’s hand by introducing mitigating evidence under *any* standard of proof.

Therefore, there is no need for HB 75; judges are able to make findings of mitigating circumstances or reject them, and reduce a sentence or not, without imposing a high standard of proof on defendants. And on the margins, HB 75 would limit judges’ discretion to be merciful at sentencing in response to defendants’ evidence of mitigation.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Article IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS