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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/11/16

SPONSOR HRPAC LAST UPDATED \_\_\_\_\_ HB 305/HRPACS

SHORT TITLE PPHSW - Additional Felonies for Prison Earned Time SB \_\_\_\_\_

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>			Increase See Fiscal Implications	Increase See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 Attorney General's Office (AGO)  
 New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of HPRAC Substitute

House Regulatory and Public Affairs Committee substitute for House Bill 305 proposes to amend Section 33-2-34 NMSA 1978 the omnibus meritorious deduction statute that applies to all sentences of confinement to state prisons. The bill adds first degree child abuse resulting in death to prison sentences not eligible for meritorious deductions. It also adds to four offenses to the list of serious violent felonies: first degree murder committed by a serious youthful offender, child abuse resulting in great bodily harm to a child, DWI homicide or great bodily harm by vehicle and injury to a pregnant woman by vehicle. Under the bill's changes, inmates sentenced for these crimes would earn meritorious deductions at a reduced rate; therefore serving more time in prison.

The bill's effective date is July 1, 2016.

**FISCAL IMPLICATIONS**

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) is an average of \$123 per day, or about \$45,250 per year. The average cost to incarcerate one inmate over the last three years has increased 6.5 percent. 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 \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Although the NMCD’s budget may not be negatively impacted in FY16 or FY17, classifying homicide by vehicle as a serious violent offense for the purpose of earned meritorious deductions increases the actual time an offender will stay in prison because they are no longer eligible to earn “good time” at a higher rate. The table below shows the calculation for the additional years. The impact to the general fund is approximately \$1.1 million based on a four-year-admissions average.

<b>Most Serious Prison Admission Charge</b>	<b>Estimated Annual Admissions (average of last 4 years)</b>	<b>Increased Sentence length in years</b>	<b>Cost Per Offender</b>	<b>Estimated Additional Cost</b>
Homicide by Vehicle	11	2.15	\$45,250	\$1,070,163

A sentence of child abuse resulting in death already carries a life sentence. No data for first degree murder by serious youthful offenders or injury to pregnant women so a reliable estimate cannot be provided for additional prison time for these crimes. However, based on the 6.5 percent three-year-average cost increase, the annual cost to incarcerate one inmate in FY18 could be as high as \$48,208.

According to NMCD, in its response to other bills, ultimately it seems likely that this bill, in conjunction with other bills increasing the criminal penalties of various crimes, will result in the Department reaching its full capacity. At that point, the Department will have to build, purchase or lease additional bed space, and such space is expensive. Using probation or diversion programs to avoid sending non-predatory, nonviolent offenders in order to make room for the predatory DWI offenders in prison is going to be needed to reduce or alleviate the Department’s fast approaching lack of bed space. NMCD predicts it will reach 98 percent of its prison capacity by the summer of 2016.

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**

According to AOC, the difficulty with Section 33-2-34 lies with its definitions subsection. Only crimes specifically listed as serious violent felonies are considered as such; all other crimes not listed are considered nonviolent felonies. (A first degree murder sentence is without possibility of parole, so there are no meritorious deductions) The current statute includes a long list of crimes as serious violent felonies. A judge may also determine upon sentencing that several other crimes may still be serious violent felonies if the nature of the crime and resulting injury support the finding. Inclusion of the crimes listed in the bill would assure that sentences for each of them would only be reduced at the lower rate for serious violent felonies.

The AGO states that by adding the language “that does not result in death or great bodily harm” to the optional serious violent offense of first, second, or third degree child abuse, child abuse resulting in great bodily harm is removed as an optional serious violent offense and becomes, by default, a non-violent offense as described in §33-2-34(L)(3).

**TECHNICAL ISSUES**

The AGO states first degree child abuse always results in death or great bodily harm, thus rendering the addition of “that does not result in death or great bodily harm” to first degree child abuse meaningless. It suggests excluding the proposed language “that does not result in death or great bodily harm.”

ABS/jle/al