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## FISCAL IMPACT REPORT

**SPONSOR** Powdrell-Culbert      **ORIGINAL DATE** 2/9/2018  
**LAST UPDATED** 2/12/2018      **HB** 242

**SHORT TITLE** Limit Certain Sentence Reductions      **SB** \_\_\_\_\_

**ANALYST** Edwards

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$178.7 - \$893.5	\$175.5 - \$877.5	\$354.2 - \$1,771.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 32 (also amending Section 30-16-4 NMSA 1978, governing aggravated burglary, to increase penalties for certain crimes when committed in an evacuation zone).

Relates to HB 18, HB 19, HB 25, HB 28, HB 29, HB 91, and HB 120.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Law Office of the Public Defender (LOPD)

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

Office of the Attorney General (NMAG)

### SUMMARY

#### Synopsis of Bill

HB 242 limits the reduction, deferment or suspension of sentences or the granting of conditional discharges for the following crimes. The bill does the following:

Amends Section 30-16-2 NMSA 1978, governing the crime of robbery, to provide a minimum term of imprisonment of three years, which shall not be suspended or deferred, for the first offense of the second degree felony crime of robbery while armed with a deadly weapon and a minimum term of imprisonment of six years, which shall not be suspended or deferred, for the first degree felony crime of a second or subsequent offense.

Amends Section 30-16-4 NMSA 1978, governing the crime of aggravated burglary, to provide a minimum term of imprisonment of three years, which shall not be suspended or deferred, for the second-degree felony crime of aggravated burglary.

Amends Section 31-20-13 NMSA 1978 to prohibit the court from entering a conditional discharge order for a person found guilty of robbery while armed with a deadly weapon or aggravated burglary.

HB 242 provides that the provisions of the act apply to persons convicted on or after July 1, 2018, the effective date of the act.

## **FISCAL IMPLICATIONS**

The AOC explains as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs cannot be quantified at this time. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the Judicial Branch 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.

AODA believes HB 242 will have a minimal fiscal impact on the district attorneys. Providing a mandatory minimum sentence for these crimes, that cannot be suspended or deferred, may result in more plea agreements or may result in more trials. If it results in more plea agreements, costs to the district attorneys could be reduced. If it results in more trials, costs to the district attorneys could increase. If HB 242 results in increased incarceration, it will result in increased costs to the state.

LOPD states the “enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to stay ahead of the rush. The proposed legislation would also have a fiscal impact on NMCD. Presumably the courts, DAs and NMAG would be affected in similar measure to LOPD. Assessment of the impact on the LOPD would be necessary after the implementation of the proposed higher-penalty scheme. These felonies would be handled by mid-level LOPD felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. An Associate Trial Attorney’s mid-point salary including benefits is \$92.5 thousand in Albuquerque/Santa Fe and \$99.7 thousand in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$2,300 with start-up costs of \$3,128; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$77.1 thousand.”

LOPD did not provide an estimate of how many attorneys may need to be added to accommodate increased caseloads. However, using LOPD’s cost estimates, adding one additional attorney to process the increased number of trials would cost \$178.7 thousand in the first year, including nonrecurring startup costs. To add 5 attorneys, first year costs would be \$893.5 thousand. In FY20, without nonrecurring startup costs and assuming no additional attorneys are needed, costs would range from \$175.5 thousand to \$877.5 thousand for the one to five attorneys.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the cost per day to house an inmate in public state prisons in FY17 was an average of \$123 per day, or about \$44,895 per year. 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 by an average of two percent, and the FY18 budget is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendation that NMCD ended FY17 with a \$1 million budget surplus.

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**

The AOC provided the following analysis:

- 1) Under HB 242, the discretion of the court is limited by prohibiting the suspension or deferment of the minimum term of imprisonment. The court is in the best position to make determinations regarding mitigating and aggravating circumstances and appropriate sentence alterations, having heard testimony and taken evidence in the case. As a separate and equal branch of the government, the court's discretion should not be limited.
- 2) Section 31-18-15 NMSA 1978 provides the following basic sentences:
  - First degree felony: 18 years imprisonment
  - Second degree felony: 9 years imprisonment

In providing a mandatory minimum sentence of 6 years for the first degree felony crime of a second or subsequent offense of robbery while armed with a deadly weapon and a mandatory minimum of 3 years for second degree felony crimes, HB 242 is providing inconsistent penalties, which could lead to more trials. While people who would be eligible for conditional discharges are not really pleading guilty to armed robbery or aggravated burglary, the reality is that people will not be pleading guilty to these crimes anymore if HB 242 is enacted.

NMAG explains:

The bill limits a sentencing court's discretion when the crime is armed robbery or aggravated burglary, mandates that the court impose a mandatory minimum sentence, and forbids the entry of a conditional discharge. A first-time armed robbery is a second degree felony and carries a maximum sentence of nine years. *See* NMSA 1978, § 31-18-15(A)(7). A second or subsequent armed robbery is a first degree felony which carries a maximum sentence of 18 years. *See* NMSA 1978, § 31-18-15(A)(3). The bill would require a mandatory minimum term of incarceration of a third of that maximum sentence.

The same is true of aggravated burglary which is a second degree felony and carries a maximum sentence of nine years. Under this bill, the court would be required to impose a mandatory minimum term of incarceration of a third of that maximum sentence.

The bill also makes changes to the aggravated burglary statute that could affect how it is interpreted. The bill changes “any” to “a” when describing the vehicle or structure entered and in describing the act that the offender commits inside. It is unclear if this is meant to change the meaning of the statute. *See e.g. State v. Olsson*, 2014-NMSC-012, 324 P.3d 1230 (in considering the intended unit of prosecution of the sexual exploitation of children statute, the Supreme Court discussed the use of the term “any” and found the statute was ambiguous).

The bill also changes Subsection B which proscribes a person arming himself after entering with the intent to commit a felony or theft therein from “arms himself” to “is armed.” It is unclear if this is meant to change the reach of the statute. The current version of the statute has been found to support a conviction for aggravated burglary where the defendant stole unloaded guns. *State v. Luna*, 1982-NMCA-150, 99 N.M. 76. The Court found in the same opinion that the Legislature meant to deter the commission of burglaries and the possession of firearms during such crimes. *See also State v. Padilla*, 1996-NMCA-072, 122 N.M. 92 (aggravated burglary conviction upheld where defendant armed himself with a hunting knife even though the knife was in a trash can that he carried away rather than on his person). This change appears to invite some unnecessary ambiguity into the statute.

## **CONFLICT, RELATIONSHIP**

AOC states HB 242 conflicts with HB 32 (also amending Section 30-16-4 NMSA 1978, governing aggravated burglary, to increase penalties for certain crimes when committed in an evacuation zone).

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