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FISCAL IMPACT REPORT

SPONSOR Brown/Lord/Rehm/ **ORIGINAL DATE** 02/22/21
Black **LAST UPDATED** _____ **HB** 293

SHORT TITLE Increase Certain Mandatory Minimum Sentences **SB** _____

ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications					

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB59, HB114, HB140, HB156
Conflicts with HB140, HB156

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Office of the Attorney General (NMAG)
Department of Public Safety (DPS)
Sentencing Commission (NMSC)
Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 293 increases the minimum term of imprisonment from three to five years for criminal sexual penetration in the second degree when the victim is a child 13 to 18 years of age and criminal sexual contact of a minor in the second degree.

HB293 also changes the habitual offender statute so that after one felony conviction, the enhancement on the basic sentence is increased from one to two years; after two felony convictions, the enhancement is increased from four to five years; and after three or more felony convictions, the enhancement is increased from eight to nine years.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

AOC states 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 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.

NMCD and NMSC note that the fiscal impact of the bill is difficult to estimate. However, the creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. According to NMSC, for criminal sex offenses, 1st degree average sentence length is 3,100 days, and 2nd degree average sentence length is 2,011 days, although NMSC notes that there are wide variations in the sentence lengths in these cases. NMSC reports the average cost to incarcerate a single inmate in FY20 was \$44.8 thousand; however, due to the high fixed costs of the state's prison facilities, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.3 thousand per inmate per year across all facilities.

SIGNIFICANT ISSUES

AOC states that by increasing mandatory minimum sentences and sentencing enhancements for habitual offenders HB293 is likely to result in more defendants invoking their right to trials, as well as to jury trials. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury trials.

NMSC notes it is difficult to determine what the effect of passing HB293 would be on the state's prison population, but it would likely lead to more people being incarcerated by the Corrections Department. For sex offenses, 1st degree average sentence length is 3,100 days, and 2nd degree average sentence length is 2,011 days; it should be noted that there are wide variations in the sentence lengths in these cases. The average per day cost to incarcerate someone in the state's prison system is \$122.85/day; this average includes private and public facilities.

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CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB293 relates to HB59, which extends the time limits for which a habitual offender can be charged under the habitual statute; HB114, which excludes DWI and drug crimes from the habitual enhancements; and HB140, which eliminates mandatory minimum sentences for criminal sexual penetration in the second degree and criminal sexual contact of a minor, and mandatory habitual enhancements.

HB293 conflicts with HB140, which also amends Sections 30-9-11 and 30-9-13, and with HB156, which also amends Section 30-9-11.

BG/sb