

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 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 24 January 2023

Bill No: HB 155-280

Sponsor: William “Bill” R. Rehm
Short Three Strikes Law
Title: _____

Agency Name and Code 280-Law Offices of the Public Defender (LOPD)
Number: _____

Person Writing Kate Baldrige

Phone: 505-395-2890 **Email** Kathleen.baldrige@lopnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

This bill, HB 155, is nearly identical to one unsuccessfully proposed in the 2023 Legislative Session as HB 58, and is similar or identical to the following earlier unsuccessfully proposed legislation: HB 31 (2022) HB 58 (2021), HB 33 (2020), HB 103 (2019), HB 28 (2018), HB 13 (2017), and HB 37 (2016).

HB 155 seeks to amend NMSA 1978, Section 31-18-23, the existing sentencing enhancement statute relating to “Three violent felony convictions – mandatory life imprisonment.” In addition to this bill proposes to add additional qualifying felonies to the definition of “violent felony” and applies with equal force to certain convictions incurred by a defendant under the age of eighteen.

The statute currently includes:

- first and second degree murder;
- second degree shooting at or from a motor vehicle (resulting in great bodily harm);
- kidnapping resulting in great bodily harm;
- aggravated, first degree criminal sexual penetration
- two variants of second degree criminal sexual penetration (in the commission of a felony or with a deadly weapon); and
- armed robbery resulting in great bodily harm.

The bill would not apply to a violent felony conviction incurred by a defendant before the defendant reaches the age of eighteen, unless:

- the defendant was sentenced as an adult pursuant to the provisions of Sections 31-18-15.3 (serious youthful offender) or 32A-2-20 (youthful offender) or
- in the case of a violent felony conviction from another state, the defendant was sentenced as an adult pursuant to the laws of that state.

The bill would add the following additional offenses to the definition of “violent felonies”:

- voluntary manslaughter, § 30-2-3
- involuntary manslaughter, § 30-2-3
- aggravated battery inflicting great bodily harm, § 30-3-5
- shooting at a dwelling resulting in great bodily harm, § 30-3-8

- third degree aggravated battery against a household member, § 30-3-16 (great bodily harm or deadly weapon)
- child abuse that results in great bodily harm or death, § 30-6-1(E)-(H)
- aggravated criminal sexual penetration of a child with an intent to kill or depraved mind, § 30-9-11(C)
- criminal sexual penetration of a child under 13 or by use of force resulting in great bodily harm, § 30-9-11(D)
- criminal sexual penetration in the second degree, §30-9-11(E)
- criminal sexual penetration in the third degree, § 30-9-11(F)
- armed robbery *not* resulting in great bodily harm, § 30-16-2
- aggravated arson, § 30-17-6
- aggravated battery upon a peace officer, § 30-22-25
- homicide or great bodily harm by vehicle, § 66-8-101 and
- injury to a pregnant woman by vehicle, § 66-8-101.1

Thus, the bill significantly increases the number and type of qualifying felony under which a person being sentenced for a third conviction – of any combination of listed offenses – must be given a mandatory life sentence and subjects certain defendants to mandatory life sentences on the basis of convictions occurring before the age of eighteen. The bill does address relevant parole eligibility.

The legislation’s effective date would be July 1, 2024.

FISCAL IMPLICATIONS

Since a mandatory life sentence is at issue, a person charged with a third qualifying felony would be much more likely to demand a full trial in the hopes of either acquittal or at least conviction of a lesser included offense that would not trigger a life sentence. This bill would significantly increase the number of such trials.

Such an increase in cases going to trial – for cases that, due to their seriousness, often involve more complex trials than others – would certainly impact resources of LOPD and those of the courts and DAs, as well. However, it is impossible to predict the number of such eligible charges or to quantify the number of these additional felonies would constitute third offenses for LOPD clients.

The increase in LOPD workload would almost certainly result in the need for additional attorneys and investigators being hired by LOPD and, therefore, additional funding would be necessary. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions with the potential for life sentences would bring a concomitant need for an increase in indigent defense funding. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), but more likely higher-level attorneys (Trial Attorneys). A mid-level felony capable Associate Trial Attorney’s mid-point salary *including benefits* is \$136, 321.97 in Albuquerque/Santa Fe and \$144, 811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary *including benefits* is \$149, 063.13 in Albuquerque/Santa Fe and \$157, 552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12, 780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126, 722.33.

This increase in trials would also increase litigation costs for the courts and District Attorneys' offices. Moreover, life sentences, and even lifetime parole terms, are certain to impact the housing and parole budgets for the Department of Corrections.

SIGNIFICANT ISSUES

The presumed purpose of Section 31-18-23, is to target individuals who themselves have shown a "violent nature," or "proclivity for violence," so that the safety of the community justifies a life sentence for a crime that otherwise does not carry a life sentence. With that in mind, HB 155 does make an effort to maintain the physical harm component in defining "violent felonies." However, there are a few proposed additional offenses whose inclusion reaches beyond the type of offense this enhancement is designed to address.

Armed robbery is essentially a specific form of assault. It is the use of a *threat* of violence to steal from someone, where a weapon is used. Again, noting that almost any object can be considered a deadly weapon, not all armed robberies involve physical harm whatsoever. Thus, maintaining the statute's current great bodily harm requirement is vital to maintaining the statute's purpose.

Similarly, third-degree aggravated battery (whether the general version, against a household member, or against a peace officer) does not inherently require injury at all, as the deadly weapon alternative carries no such requirement. Particularly because the term "deadly weapon" can include extremely innocuous objects, limiting the "violent offense" definition to those batteries resulting in great bodily harm better achieves the goal of Section 31-18-23, which is to identify individuals with a proclivity for extreme violence.

All homicides result in the death of a human being. Nevertheless, within "homicide," there is essentially a four-tier structure for culpability, which is premised on the intentions of the actor, and the relative sentences reflect a societal recognition that not all deaths are murder. Section 31-18-23 already includes both first and second degree murder. However, HB 155's proposed addition of manslaughter is highly problematic.

While voluntary manslaughter involves intentional conduct, it is defined by the existence of "provocation," which is what makes it different from "murder." In other words, it is commonly understood that a person who is not necessarily or otherwise inclined to violence, acted violently because the victim put them into a highly provoking situation. Thus, this offense does not evidence a person's "proclivity for violence."

Even more troubling, *involuntary* manslaughter essentially constitutes death resulting from criminal negligence. Negligent behavior – while it can be dangerous and may warrant criminal punishment – does not carry with it the level of culpability associated with heedlessly violent behavior, nor does it evidence a person's "violent nature."

This rationale similarly applies to negligent child abuse, which HB 155 proposes to include as a "violent felony." To be considered a "violent" crime triggering the life sentence, only intentional child abuse addresses the type of violent individual the statute is concerned with.

Similarly, injuries from car crashes are not intentional acts falling within the scope of "violent" behavior this statute is targeting. These crimes fall under the scope of criminal negligence crimes. Without minimizing their inherent seriousness, and noting that when committed under the influence, they are subject to their own enhancements often resulting in very lengthy sentences,

these offenses do not coincide with a violent nature or proclivity for violence.

Finally, third-degree aggravated battery does not inherently require injury at all, as the deadly weapon alternative carries no such requirement.

In addition to the inclusion of certain felonies as “violent” felonies, where a life sentence is given as an enhancement incurred for three separate events, where each crime alone would not have warranted such a severe penalty, parole eligibility should be maintained. HB 155 makes such inmates *ineligible* for parole *unless* they have served 10 years of the life sentence and are over 60 years old. Because whether to grant or deny parole will be case-specific and at the discretion of the parole board, an “or” might be more appropriate. If an inmate must be sixty years old, to even be considered, a defendant could be sentenced to life under Section 31-18-23 while in their 20s, and then would not become eligible for parole until after serving *more* than 30 years, which is an even more restrictive parole eligibility than the life sentence for first-degree murder. *See* Section 31-21-10(A) (eligible after 30 years).

As noted above, the proposed legislation would certainly affect LOPD attorneys’ representation in cases where a potential third violent felony is charged, increasing the number of these cases that go to trial.

PERFORMANCE IMPLICATIONS

As noted above, the proposed legislation would certainly affect LOPD attorneys’ representation in cases where a potential third violent felony is charged, increasing the number of these cases that go to trial.

Moreover, without a discovery/disclosure provision, it is presently unclear whether prosecutors would have to give notice of an intent to punish a qualifying crime with life imprisonment prior to sentencing. The result could be that a case that LOPD would ordinarily refer to its major crime unit for representation by a seasoned, experienced attorney could, without such notice, be handled by an attorney with far less experience.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. 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

None noted.

ALTERNATIVES

Focusing on crimes that evidence a person's inherent proclivity for violence is the only way to ensure that a life sentence is imposed in only the appropriate cases, particularly where Section 31-18-23 does not allow any judicial discretion to find that a particular defendant is not in fact violent or a danger to the community. As an alternative, the Legislature could revisit the basic habitual offender statute.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. The proposed additional felonies, as a third felony offense, would still be subject to a four-year mandatory sentencing enhancement under Section 31-18-17, the Habitual Offender enhancement statute applicable to all non-capital felonies. (A fourth or subsequent felony offense incurs a mandatory eight-year enhancement.) Because that enhancement term applies to *each* felony in a new proceeding, it is a practical reality that habitual offender enhancements in a single case often total 12 or 16 years. This would be true even when applied to convictions incurred by persons under eighteen receiving an adult sentence.

AMENDMENTS

None noted.