

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2017 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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 Jan 10, 2017

Bill No: HB 13

Sponsor: William "Bill" Rehm

Agency Code: 264

Short Three Strikes Law

Person Writing Gary Cade

Title: \_\_\_\_\_

Phone: 505-507-7752 Email cadeabq@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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: HB-13 would add 12 more violent crime categories to the five crime types now present in the “three strikes” list of violent felonies that can result in a life sentence, and would broaden the list of criminal sexual penetration (“CSP”) offenses currently included. It would also include any convictions for juveniles who were sentenced as an adult under New Mexico law or the applicable law in another state. The bill would add a new provision to the current three strikes law so that any persons sentenced under the act would be eligible for parole if they had served at least ten years of their life sentence and were at least 60 years old.

**FISCAL IMPLICATIONS**

Unknown.

**SIGNIFICANT ISSUES**

The current “three strikes” list of violent felonies that can result in a life sentence are: murder in the first or second degree; shooting at or from a motor vehicle resulting in great bodily harm; kidnapping resulting in great bodily harm; CSP in the third or fourth degree of a child and CSP during commission of another felony or while armed with a deadly weapon; and robbery, while armed with a deadly weapon resulting in great bodily harm. See, Sec. 31-18-23(E) , NMSA 1978.

HB-13 would add the following violent felonies to that list: voluntary manslaughter; involuntary manslaughter; aggravated battery with a deadly weapon or infliction of great bodily harm or done in any manner where great bodily harm or death could result; shooting at a dwelling or occupied building resulting in great bodily harm; aggravated battery against a household member with a deadly weapon or infliction of great bodily harm or done in any manner where great bodily harm or death could result; abuse of a child resulting in great bodily harm; negligent abuse of a child resulting in death; intentional abuse of a child resulting in death; any second degree CSP, including: force or coercion of a child 14-18 years old, on an

inmate in a correctional institution when the perpetrator is in a position of authority over the inmate, use of force or coercion resulting in personal injury to the victim, use of force or coercion when the perpetrator is assisted by one or more persons, in the commission of another felony or when the perpetrator is armed with a deadly weapon, and, third degree CSP—not otherwise specified, perpetrated by force or coercion; aggravated arson, by an explosion or fire that causes great bodily harm; aggravated battery upon a peace officer with a deadly weapon or infliction of great bodily harm or done so in any manner in which death or great bodily harm can be inflicted; homicide by vehicle or great bodily harm by vehicle while driving under the influence of intoxicating liquor or driving under the influence of any drug or driving recklessly or resisting, evading or obstructing an officer; and, injury to a pregnant woman by vehicle while driving under the influence of intoxicating liquor or driving under the influence of any drug or driving recklessly or resisting, evading or obstructing an officer.

The additional crimes listed in HB-13 include several that do not involve intentional conduct: involuntary manslaughter, negligent abuse of a child, homicide by vehicle and injury to pregnant woman by vehicle. The current predicate felonies for the three strikes act all require intentional conduct by the offender.

The current predicate felonies for the three strikes law are either capital, first-degree or second-degree felonies. A number of the additional crimes listed in HB-13 are third degree felonies: aggravated battery, aggravated battery against a household member, CSP by force or coercion not otherwise specified in the act, aggravated battery upon a peace officer, homicide by vehicle and injury to pregnant woman by vehicle.

The existing three strikes law requires that all of the predicate felonies result in death or great bodily harm (See, Sec. 31-18-23(E)(1), NMSA: "...an injury that creates a high probability of death or that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body"), or that involve sexual offenses against children or sexual offenses in the commission of another felony or while the offender is armed with a deadly weapon. Several of the proposed new crimes that would be added to the existing law do not require that the victim be injured but only that the offender act in such a way that great bodily harm or death can be inflicted: aggravated battery, aggravated battery against a household member, aggravated battery upon a peace officer and, arguably, CSP against adults by threatened use of physical force or violence or other threats or crimes against persons who are asleep, unconscious, physically helpless or unable to understand the consequences of the sex act or CSP perpetrated by a psychotherapist (broadly defined) on their patient during the course of their psychotherapy or within one year of the therapy being terminated. Consensual sex acts between adults could be predicate felonies for life in prison under the act if they involved psychotherapists and their patients, and inmates and persons of authority over the inmate.

There is currently in place a law that a person convicted of two violent sexual offenses shall be sentenced to life in prison in addition to the punishment imposed for the second violent sexual offense. (See, Sec. 30-18-25(A), NMSA 1978.) A "violent sexual offense" means first degree CSP as provided in Sec. 30-9-11(D), NMSA 1978 or second degree CSP as provided in Sec. 30-9-11(E), NMSA 1978. (See, Sec. 30-18-25(F), NMSA 1978). HB-37 would incorporate both of

those subsections in the three strikes law, so a person facing a life sentence pursuant to the “two strikes” sex offense statute might argue that the later enactment requiring three violent felony offenses should control.

HB-13 continues to include robbery if the perpetrator is armed with a deadly weapon but has an additional requirement, beyond the regular statute, that the victim suffer great bodily harm, and also requires great bodily harm result from kidnapping which is more than is required for conviction under the regular kidnapping statute. One of the proposed new crimes, injury to pregnant woman by vehicle, would add another provision (matching the homicide by vehicle statute) that a violation could be committed by someone resisting, evading or obstructing an officer, in addition to the other prohibitions against driving under the influence of intoxicating liquor or drugs or driving recklessly.

---

HB-13 would change the current three strikes law which now prohibits violent crimes committed by juveniles under age 18 from being included and would expressly permit their use if the juvenile was sentenced as an adult under New Mexico law or sentenced as an adult under the laws in that other state.

New Mexico designates an individual 15 to 18 years of age found guilty of first degree murder as a “serious youthful offender” and permits them to be sentenced under the Criminal Sentencing Act, to less than but no more than the maximum penalty an adult could receive for that crime. See, Sec. 32A-2-3(H) and Sec. 31-18-15.3, NMSA 1978. If a juvenile is 14 to 18 years old at the time of their offense and is adjudicated for at least one of 13 specified felonies (second degree murder, assault with intent to commit a violent felony, kidnapping, aggravated battery, aggravated battery against a household member, aggravated battery against a household member, shooting at a dwelling or occupied building or shooting at or from a motor vehicle [even without injury], dangerous use of explosives, criminal sexual penetration, robbery, aggravated burglary and abuse of a child resulting in great bodily harm or death), or, who is 14-18 years old at the time of the offense and is adjudicated by for any felony offense and who has had three prior separate felony adjudications within three years immediately prior to the instant offense, they are designated as a “youthful offender.” See, Sec. 32A-2-3(J), NMSA 1978. The court has discretion to invoke either an adult sentence or juvenile sanctions against a youthful offender. To invoke an adult sentence the court must find that the youthful offender is not amenable to treatment or rehabilitation in available facilities and is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. A series of specified factors must be considered by the court in making their findings. See, Sec. 32A-2-20(A)—(C), NMSA 1978. If the court invokes an adult sentence it may sentence the child to less than but no more than the mandatory adult sentence. Id.

HB-13 would not change the two strikes sex offense statute which would continue to prohibit use of a violent sexual offense conviction incurred by a juvenile defendant before they were 18 years old. (See, Sec. 31-18-25(D), NMSA 1978) so there is a conflict between the bill as drafted and that statute. If a juvenile committed a felony and was sentenced as an adult the prior crime may be used to enhance their sentence as a habitual offender. See, *State v. Leon*, 2013-NMCA-11, cert. den.

Litigation over the propriety of using juvenile offenses, even if the offenders were sentenced as adults, is practically certain to occur. This is especially so if the juvenile was designated as only a youthful offender since key factors in imposing an adult sentence depend on whether there were available facilities for treatment or rehabilitation of the child. The child's home, environment and development and the likelihood of their reasonable rehabilitation in available facilities are specifically noted as factors the court must consider. A defendant facing life in prison if one, or more, of their crimes was committed when they were a juvenile could try to put the juvenile court system on trial for its failure to have adequate facilities for treatment and rehabilitation so they were given adult sentences.

They are also likely to challenge use of any out of state juvenile adjudications where they were sentenced as adults if the other state's provisions don't at least match what is required in New Mexico to impose an adult sentence. This is especially so since a felony conviction in another state as an adult must be comparable to a violent adult felony in New Mexico to be used as a predicate felony under the three strikes law. See, Sec. 31-18-23(D), NMSA 1978.

---

HB-13 would permit a person sentenced to life in prison under the three strikes law to be paroled after ten years if they had served at least ten years of that sentence enhancement and are at least 60 years old. If granted parole they would be under supervision by the parole board for the rest of their natural life. The bill would not change the language of the existing three strikes law that if at least the third violent felony conviction is in New Mexico, in addition to the sentence imposed for the third violent felony conviction, the offender will be punished by a sentence of life imprisonment. Depending upon how the judge structures the sentence, elderly inmates could argue for release after serving just ten years despite being sentenced to life under the three strikes law if, for example, the sentence on the underlying felony is run concurrently with the enhancement, or even if the sentences are run consecutively as little as 13 years if their third violent felony was one of the proposed additional crimes which is a third degree felony.

## **ADMINISTRATIVE IMPLICATIONS**

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The current three strikes law includes first-degree murder, which is now punishable by life in prison without parole (See, Sec. 30-2-1(A) and Sec. 30-18-14, NMSA 1978) and first-degree aggravated CSP which is punishable now by life imprisonment. (See, Sec. 30-9-11(C) and Sec. 31-18-15(A)(2), NMSA 1978) HB-37 would add intentional child abuse that results in the death of a child, which is a first degree felony punishable by life imprisonment, to the existing three strikes law. (See, Sec. 30-6-1(H) and Sec. 30-18-15(A)(2), NMSA 1978). In other words, for several of the listed crimes the life sentence imposed by the three strikes law could be in addition to a life sentence imposed for the predicate felony. An additional sentencing hearing to implement an additional life sentence under the three strikes law could be unwarranted if financial and personnel resources are strained.

### **TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**