

LFC Requester: _____

AGENCY BILL ANALYSIS
2017 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 Jan. 19, 2017
Bill No: HB 54

Sponsor: Nate Gentry
Short Additional Felonies for
Title: Sentencing

Agency Code: 264
Person Writing Gary Cade
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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)

: third

| | FY17 | FY18 | FY19 | 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: HB 54 would add twelve new categories of crimes to the list of violent felonies that now can result in mandatory life imprisonment if at least the third violent felony conviction was obtained in New Mexico. The new felony additions would be: voluntary manslaughter; aggravated (sic) assault with intent to commit a violent felony; third degree aggravated battery; second or third degree shooting at a dwelling or occupied building; third degree aggravated battery against a household member; first degree abuse of a child; second or third degree criminal sexual contact of a minor; aggravated burglary; aggravated arson; aggravated assault upon a peace officer; assault with intent to commit a violent felony upon a peace officer; and, aggravated battery upon a peace officer.

In addition, HB 54 would amend four of the five felony crimes currently listed in the sentencing act as predicates for the mandatory life imprisonment sentences. The definition of great bodily harm would be deleted, and the requirements for great bodily harm resulting from: shooting at or from a motor vehicle, kidnapping, and robbery would also be deleted. Criminal sexual penetration (“CSP”) statutory listing would be amended to include any aggravated or first or second or third degree CSP. The listing for murder in the first or second degree would remain unchanged. The additional crimes and amended crimes set forth in the bill would, be similar to the list of serious violent offenses for which offenders are eligible for only limited good time awards while incarcerated. See, Sect. 33-2-34(L), NMSA 1978. Aggravated (sic) assault with intent to commit a violent, first degree child abuse, and aggravated burglary are the only crimes that are not included in those for which reduced good time while incarcerated is mandatory, and they are included in those crimes that a sentencing judge may order limited good time.

FISCAL IMPLICATIONS

By more than tripling the number of violent felonies included in the listed crimes that can result in mandatory life imprisonment if at least the third conviction was obtained in New Mexico, the number of persons serving a life sentence would be expected to significantly increase and have a substantial fiscal impact on the department of corrections. Further, whenever potential punishment is increased the number of criminal cases being litigated instead of resolved by plea agreements also increases. If HB 54 becomes law it will almost certainly result in more motion hearings, more trials, and more appeals which will require more fiscal and personal resources for the courts, prosecutors and defenders.

SIGNIFICANT ISSUES

HB 54 would expand the list of five violent felonies now listed as predicates (in Sect. 31-18-23, NMSA 1978) for a mandatory life sentence in prison after the third conviction in New Mexico to seventeen. It would change the list of qualifying crimes which is now limited to just first and second degree felonies to include ten crimes that are third degree felonies. For five of those felonies—aggravated (sic) assault with intent commit a violent felony, aggravated battery, aggravated battery on a household member (“HHM”), aggravated battery upon a peace officer (“PO”), and aggravated assault upon a peace officer (“PO”), third degree is the highest level possible, and aggravated battery upon a peace officer can also be fourth degree felony.

With the exception of the first and second degree criminal sexual penetration (“CSP”), all crimes listed in the current statute require that death or great bodily injury (“GBI”) result from the commission of the crime. In addition to murder and voluntary manslaughter, aggravated arson is the only other crime listed in HB 54 that includes a requirement that GBI result from its commission. The other crimes listed in the bill can have convictions based on factual predicates besides GBI. Robbery would no longer have to result in any injury at all to be included in the list of violent felonies that can culminate in a mandatory life sentence if at least the third conviction occurs in New Mexico. Convictions for aggravated battery, aggravated battery HHM and aggravated battery PO, could all be based upon use of a deadly weapon or acting in a manner whereby great bodily harm or death can be inflicted, although inflicting GBI is still a possible way to commit those crimes. The crimes of aggravated battery, aggravated (sic) assault with intent to commit a violent felony, kidnapping, aggravated burglary, aggravated arson, aggravated assault upon a peace officer and assault with intent to commit a violent felony upon a peace officer can also be committed in a variety of ways which do not result in any injury.

The sex crimes, aggravated and first and second degree CSP and criminal sexual contact of a minor (“CSCM”) can be committed in a variety of ways. New sex crimes the bill would add, besides CSCM, are CSP crimes perpetrated: by the use of force or coercion on a child thirteen to eighteen years of age; on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate; by the use of force or coercion that results in personal injury to the victim; and, by the use of force or coercion when the perpetrator is aided by one or more persons.

If HB 54 is passed with its dramatic increase in the number of violent felonies that can serve as predicates for a life sentence, most of which do not require that someone be killed or seriously injured, it is very likely to be challenged as in violation of the constitutional rights against cruel and unusual punishment and equal protection. See, U.S. Constitution, Amendment VIII and Amendment XIV, and N.M. Constitution, Article II, Sect. 13 and Sect. 18. Although it may not be probable, someone could face a life sentence for committing three fourth degree felonies, none of which involved any injury, under the bill as drafted. See, Sect. 30-22-25(B), NMSA 1978. California’s “three strikes” law was challenged after two consecutive 25 years to life sentences were imposed on an offender who was convicted of two minor theft offenses for shop lifting video tapes, worth \$84.70 and \$68.84 respectively, and the law was upheld by the United States Supreme Court. See, *Lockyer v. Andrade*, 538 U.S. 63 (2003).

Whenever punishment is increased, even if it just a possibility for repeat offenders, the incentive to contest the charges is increased. Persons facing their third violent felony are almost certain to vigorously litigate the case and to go to trial because a mandatory life sentence means there is no incentive to enter a plea of guilty or no contest. More trials will also result in more appeals because

there will be fewer waivers of the right of appeal that comes with a plea and if the convictions are upheld the consequences can be very severe. The result will be that more personal and financial resources will be needed so the trial and appellate courts, prosecutors and defenders can fully and fairly litigate all of the violent felony cases that can result in a mandatory life sentence.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

HB 54, as drafted, refers only to “voluntary” and does not include “manslaughter” which is part of its title. If the intent was also to include involuntary manslaughter which is also a crime in Sect. 30-2-3, NMSA, that should be clarified. The bill also includes language expressed as “aggravated assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978.” In fact, the name of the crime in that statute is simply “assault with intent to commit a violent felony,” and “aggravated” is not included.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS