

LFC Requester: _____

AGENCY BILL ANALYSIS
2016 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. 7, 2016

Bill No: HB 056

Sponsor: Paul A. Pacheco

Agency Code: 264

Short Three Strikes Law

Person Writing LFC Requester: _____

Title: _____

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

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

Date Jan. 5, 2016

Bill No: HB 037

Check all that apply:

Amendment _____
 Substitute _____

Sponsor: William "Bill" Rehm

Agency Code: 264

Short Three Strikes Law

Person Writing Gary Cade

Title: _____

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

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	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-56 would add 13 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 robbery, kidnapping, shooting at or from a motor vehicle and criminal sexual penetration (“CSP”) offenses currently included.

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); **criminal sexual penetration** (of a child and 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-56 would add the following violent felonies to that list:

voluntary manslaughter;

involuntary manslaughter;

aggravated (sic) assault with intent to commit a violent felony (unlawfully assaulting or striking at another with a deadly weapon or threatening or menacing another while wearing a mask, hood, robe or other covering or disguise, or assaulting another with intent to commit any felony)*;

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 or from a motor vehicle (resulting in any injury to another person)#;

shooting at a dwelling or occupied building (resulting in injury, or great bodily harm, to another person)#;

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);

intentional abuse of a child (resulting in great bodily harm), or

negligent abuse of a child (resulting in death), or

intentional abuse of a child (resulting in death)#;

second degree CSP (by use of force or coercion on a child 13-18 year old, or on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate, or by use of force or coercion that results in personal injury to the victim, or by use of force or coercion when the perpetrator is aided by one or more persons), or

third degree CSP (not otherwise specified that is perpetrated by force or coercion)#;

second degree criminal sexual contact of a minor (“CSCM”) (criminal sexual contact of the unclothed intimate parts of a minor perpetrated: when the child is under 13 years old, or when the child is 13-18 years old and the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit, or the perpetrator uses force or coercion that causes personal injury to the child, or the perpetrator uses force or coercion and is aided by one or more persons or the perpetrator is armed with a deadly weapon), or

third degree CSCM (perpetrated: when the child is under 13 years old, or when the child is 13-18 years old and the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit, or the perpetrator uses force or coercion that causes personal injury to the child, or the perpetrator uses force or coercion and is aided by one or more persons or the perpetrator is armed with a deadly weapon)*; **robbery** (while armed with a deadly weapon)#;

aggravated burglary (armed with a deadly weapon, or being armed with a deadly after entering, or commits a batter upon a person inside or while entering or leaving)*; aggravated arson;

aggravated assault upon a peace officer (by assaulting or striking at a peace officer with a deadly weapon or while wearing a mask, hood, robe or other covering or being disguised or assaulting a peace officer with intent to commit any felony)*;

assault with intent to commit a violent felony upon a peace officer (by assaulting a peace officer while he is in lawful discharge of his duties with intent to kill the officer)*; and,

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).

[NOTE: * indicates crimes not included in another “three strikes” law, HB-37. # indicates a difference in the crimes also listed in HB-37. HB-37 would include homicide by vehicle and injury to pregnant woman by vehicle but HB-56 does not include them.]

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-56 are third degree felonies: aggravated battery, aggravated battery against a household member, aggravated battery upon a peace officer, shooting at or from a motor vehicle with injury that is less than great bodily harm, shooting at a dwelling or occupied building with injury that is less than great bodily

harm, third degree CSP, third degree CSCM, and, aggravated assault upon a peace officer.

The additional crimes listed in HB-56 include two that do not involve intentional conduct: involuntary manslaughter and negligent abuse of a child. The current predicate felonies for the three strikes act all require intentional conduct by the offender.

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, aggravated and, arguably, some CSP crimes (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 are also several crimes that involve just threatening or menacing conduct: assault with intent to commit a violent felony, robbery, and aggravated assault upon a peace officer.

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-56 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 the mandatory life sentence for the predicate felony. An additional sentencing hearing to impose an additional life sentence provided under the three strikes law could be unwarranted if financial and personnel resources are strained.

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-56 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.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB-37 is another “three strikes” law which includes many, but not all, of the same additional offenses proposed in HB-56. As noted above, HB 37 would include homicide by vehicle and injury to pregnant woman by vehicle crimes but those are not in HB-56.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS