

LFC Requester:	
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**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. 17, 2018
Bill No: HB 18

Sponsor: Nate Gentry
Short Three Strikes Enhancement
Title: _____

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 **Email** cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

; third

	FY18	FY19	FY20	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 18 would add nine new 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 battery inflicting great bodily harm; shooting at a dwelling or occupied building that results in great bodily harm; aggravated battery against a household member by inflicting great bodily harm, with a deadly weapon or in any manner whereby great bodily harm or death can be inflicted; abuse of a child that results in great bodily harm to the child and abuse of a child that results in the death of a child; 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.

HB 18 would also amend four of the five felony crimes currently listed in the sentencing act as predicates for the mandatory life imprisonment sentences. Grammatical changes would be made to the crime of shooting at or from a motor vehicle that results in great bodily harm to another person, and kidnapping that results in great bodily harm of the victim. Aggravated criminal sexual penetration would be specified in addition to the existing language on criminal sexual penetration and the crime of robbery while armed with a deadly weapon would delete the existing language that also requires “resulting in great bodily harm.” 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.

FISCAL IMPLICATIONS

By increasing 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 may increase; but it is unclear as to how much. Therefore, a fiscal impact on the department of corrections is possible.

Further, whenever potential punishment is increased the number of criminal cases being litigated instead of resolved by plea agreements can also increase but, again, it is impossible to predict by how much. If HB 18 becomes law it may result in more motion hearings, more trials, and more appeals which will require more fiscal and personnel resources for the courts, prosecutors and defenders.

Another important consideration is how much passing the law can save the State and the communities. More specifically, it has been documented that removing violent, habitual offenders from society by incarcerating them does result in significant economic savings to budgets and to the citizens. At least two states, Arizona and Kentucky, have conducted research and concluded that when a violent, habitual offender is removed from society, then that person is no longer in a position to cause personal and economic harm. Further, the criminal justice system is spared the expense for the investigation, prosecution and appeal processes that accompany the additional crime(s) committed by someone who just goes in and out of the system.

SIGNIFICANT ISSUES

HB 18 would expand the list of five violent felonies now listed as predicates in Sec. 31-18-23, NMSA 1978, for a mandatory life sentence in prison after the third conviction in New Mexico to at least fourteen. It would change the list of qualifying crimes which is now limited to just first and second degree felonies to include five crimes that are third degree felonies: voluntary manslaughter, aggravated battery, aggravated battery on a household member, aggravated assault upon a peace officer, and aggravated battery upon a peace officer.

With the exception of some criminal sexual penetration crimes, all of the crimes listed in the current statute require that death or great bodily harm (“GBH”) result from the commission of the crime. Robbery would be changed in HB18 so GBH is no longer an element. The current statute, and HB 18 both include language regarding “kidnapping resulting in great bodily harm,” and robbery...resulting in great bodily harm.” See, Sec. 31-18-23(EE)(cc) and (d), NMSA 1978. Neither of those offenses include resulting in great bodily harm as an element. See, Sec. 30-4-1, NMSA 1978 and UJI 14-1620, SCRA 1986, and Sec. 30-16-2, NMSA 1978 and UJI 14-403, SCRA 1986.

The proposed additional crimes also would include that GBH result from its commission. Aggravated battery against a household member, 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 as listed in the bill could have convictions based on factual predicates besides GBH.

If HB 18 is passed with its increase in the number of violent felonies that can serve as predicates for a life sentence, several 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, Sec. 13 and Sec. 18. Challenges might also be mounted claiming a violation of the constitutional prohibition against ex post facto laws since the bill, as drafted, states it would, “apply to persons who have been convicted on, before or after the effective of this act of one of the violent felonies...for the purpose of determining sentence enhancements ...for subsequent felony convictions on or after the effective date of this act.” See, Article II, Sec. 19, NM Constitution.

Whenever punishment is increased, even if it just a possibility for repeat offenders, the incentive to contest the charges may increase. However, a three strikes law also will provide prosecutors leverage in plea negotiations and may wind up, in some instances, being beneficial to both the victim and the offender. Defendants facing a life sentence enhancement under the three strikes may attack previous convictions that would be used to support the enhancement. Like most new

criminal laws, more trials are to be expected in the beginning. Once the cases make their way to the appellate level and issues are resolved, then there will be a reduction in the number of cases taken to trial.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Violent, repeat offenders will continue to be able to wreak personal and financial havoc on our communities

AMENDMENTS