

LFC Requester:	
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**AGENCY BILL ANALYSIS
2018 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. 18, 2018
Bill No: HB120

Sponsor: Antonio "Moe" Maestas
Short Title: Sentencing Enhancement for Certain Crimes

Agency Code: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB112; HB91
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

HB120 creates a new sentencing enhancement and amends the existing sentencing enhancement for noncapital felonies committed with the use of a firearm.

Section 1 of HB120 enacts a new section of the Criminal Sentencing Act providing that the basic sentence may be enhanced by three years if a person sixty year of age or older or a person with a disability is intentionally injured in the commission of a noncapital felony. HB120 defines “disability” as a physical or mental disability that substantially limits one or more of a person’s functions, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working. The enhancement shall be served concurrently with any other enhancement of the basic sentence in accordance with the Criminal Sentencing Act.

Section 2 of HB120 amends NMSA 1978, Section 31-18-16, which provides sentencing enhancements when a firearm is used in a noncapital felony, making the following changes:

1. The enhancement for a first noncapital felony in which a firearm is used is raised from one year to three years. In the current statute, the three year enhancement only applies to a second or subsequent noncapital felony in which a firearm is used.
2. The enhancement “may” be imposed. The current statute provides that for adult offenders, the enhancement “shall” be imposed, the sentence shall be the first year or years served, and shall not be suspended or deferred. (Under the current statute, the enhancement “may” be imposed on a serious youthful offender or a youthful offender.)

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB120 provides for enhanced sentences. Increased penalties may increase the number of trials, or, conversely, may lead to more plea bargains, so it is unclear whether costs for the district attorneys will increase or decrease. For cases that meet the requirements of HB120’s new enhancement for crimes involving the intentional injury of a person sixty years of age or older or a person with a disability, the district attorney will have increased duties, because the court or jury must make the appropriate findings before the enhanced sentence can be imposed. Therefore, cases using this provision will require additional time and expense.

To the extent HB120 results in increased incarceration, the department of corrections will have increased expenses.

SIGNIFICANT ISSUES

HB120 should be read in light of New Mexico's existing Hate Crimes Act, NMSA 1978, Section 31-18B-1 though Section 31-18B-5, because there are both significant overlaps and significant differences in the two provisions.

The Hate Crimes Act includes enhancements when the victim is sixty years of age or older, or handicapped (using the same definition of "disabled" as used in HB120). However, the Hate Crimes Act differs from HB120 in the following respects:

1. Intent required. For a sentence to be enhanced under the Hate Crimes Act, the offender must have intended to commit the crime because of the actual or perceived age or handicapped status of the victim, whether or not the offender's belief or perception was correct. Under HB120, the prosecution must prove that the offender intended to injure the victim, and prove that the victim was sixty years of age or older, or disabled. The offender's perception is irrelevant; indeed the offender does not even have to know that the victim is sixty or over, or disabled.
2. Harm required. The Hate Crimes Act does not require that the victim sustain an injury, just that a crime occurred that was motivated by hate. HB120 requires that the victim be injured in the course of the offenders' commission of the charged crime. (Note that although Section 1 of HB120 requires an injury, it does not define "injury.")
3. Crimes to which the enhancement applies. The Hate Crimes Act enhancement may apply to any felony, misdemeanor or petty misdemeanor if the crime was motivated by hate. HB120's enhancement applies only to noncapital felonies.
4. Enhancement provisions. The Hate Crimes Act provides that the court may enhance a basic sentence for a felony by one year; the court may enhance the sentence on a second or subsequent hate crime by two years. The court may choose to include an alternative sentence that requires community service, treatment or education. For petty misdemeanors and misdemeanors, the court may include an alternative sentence in addition to the basic sentence, but the basic sentence itself is not enhanced. HB120 provides that the court may increase the basic sentence on a noncapital felony by three years.

There will be situations in which both enhancements may apply. For example, an offender may commit a battery on a disabled person, motivated by the offender's hatred for the victim's disabled status, and in the process the offender injures the victim. The prosecution could meet the showing required under HB120 and the showing required under the Hate Crimes Act, which require different showings. The courts will need to determine if applying both enhancements would constitute a double jeopardy violation. The drafter's intent on applying both provisions is unclear. HB120 provides that its enhancements shall be served concurrently with any other enhancement of the basic sentence in accordance with the Criminal Sentencing Act, but the Hate Crimes Act is separate from the Criminal Sentencing Act. So, if a offense satisfies the requirements of both provisions, could a court impose a three year enhancement under HB120 and a one year enhancement under the Hate Crimes Act, to be served consecutively? Could the court impose the three year enhancement under HB120 and an alternative sentence requiring treatment under the Hate Crimes Act?

PERFORMANCE IMPLICATIONS

The district attorneys will need to determine whether to proceed under HB120, the Hate Crimes Act, or both, taking into account the different showings that are required and being prepared to address double jeopardy challenges.

ADMINISTRATIVE IMPLICATIONS

HB120 will require new jury instructions or special interrogatories when a jury is making the required findings, or a special finding by the judge in a bench trial. HB120 provides that the judge “may” impose the enhanced sentenced (they are not required), so the judge will have to make a decision on the issue. If enhancements are sought under both Section 1 of HB120 and the Hate Crimes Act, the court will need to address any potential double jeopardy issues.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB112 would take attempted second degree murder out of the sentencing scheme set out in NMSA 1978, Section 31-18-15, and therefore that offense would not be subject to the enhancements set out in HB120.

HB91 would create a new sentence enhancement for offenses committed while a person is under the jurisdiction of a court, a jail or the corrections department. The enhancement provided by HB91 “shall” be imposed, and shall not be suspended or deferred and shall not preclude any other alteration to a person’s sentence in accordance with the Criminal Sentencing Act or the Hate Crimes Act.

TECHNICAL ISSUES

None found.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will not have a sentencing enhancement for noncapital felonies in which the defendant intentionally injures a person sixty years of age or older or a disabled person, unless the crime was motivated by hate and is subject to the Hate Crimes Act.

New Mexico’s firearm enhancement will remain mandatory for adult offenders, and a first felony involving the use of a firearm will be subject to a lesser enhancement than a second or subsequent felony involving the use of a firearm.

AMENDMENTS

None proposed.