

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2018 REGULAR SESSION**

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

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

*and*

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*{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:** HB91

**Sponsor:** Nibert, Rehm & Montoya  
**Short Title:** Alteration of Sentence 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)**

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

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

HB91 enacts a new section of the Criminal Sentencing Act providing for enhanced sentences for offenses committed while the defendant is under the jurisdiction of a court, a jail or the corrections department in connection with a criminal charge or conviction.

The enhancements apply if at the time of the crime the defendant:

1. was serving a period of probation or parole in connection with a previous conviction;
2. had escaped from confinement in a jail or prison; or
3. was released from confinement in a jail or prison pending trial, sentencing, appeal or adjudication of an alleged probation or parole violation.

HB91 provides sentence enhancements for any felony committed under those circumstances, and for the following misdemeanors committed under those circumstances:

1. Driving under the influence of intoxicating liquor or drugs
2. Battery against a household member
3. Aggravated battery against a household member

After hearing and upon a finding beyond a reasonable doubt that the defendant committed a felony or one of the listed misdemeanors while under the jurisdiction of a court, a jail or the corrections department as described in HB91, the court shall enhance the sentence for the crime committed. A sentence for a felony committed while the defendant is under the jurisdiction of a court, a jail or the department of corrections shall be increased by not less than two years and not more than five years. A sentence for one of the listed misdemeanors committed while the defendant is under the jurisdiction of a court, a jail or the department of corrections shall be increased by not less than thirty days and not more than six months. The sentence 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.

**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.

HB91 raises the penalties for certain crimes. 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 those cases that proceed to trial, the district attorney will have increased duties, because a hearing must be held to determine if the defendant

committed the crime while under the jurisdiction of a court, a jail or the corrections department, as described in HB91. Therefore, cases using this provision will require additional time and expense.

To the extent HB91 results in increased incarceration, the department of corrections will have increased expenses.

## **SIGNIFICANT ISSUES**

HB91 provides for enhanced sentences for felonies and certain misdemeanors committed while the defendant is subject to the jurisdiction of the court, a jail or the department of corrections. In such situations, the defendant has either escaped from confinement, or has violated the trust of the authority that granted him release while under its jurisdiction. When a crime is committed in these circumstances an additional penalty is warranted.

The defendant's conduct will likely have additional impacts: if the defendant escapes from confinement, that escape is itself a crime; if the defendant commits a crime while on release pending some adjudication, that release will likely be revoked, or additional restrictions will be imposed; if the defendant was on probation or parole, the new crime likely constitutes a violation, etc. Those impacts will be in addition to the increased sentence for the crime committed while under the defendant is under the jurisdiction of the court, a jail or the department of corrections.

## **PERFORMANCE IMPLICATIONS**

The district attorneys will need to conduct the hearings for enhancement of sentences under the provisions of HB91.

## **ADMINISTRATIVE IMPLICATIONS**

HB91 will require new jury instructions when a jury is making the findings required by HB91.

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

None found.

## **TECHNICAL ISSUES**

Section 1, Paragraph C of HB91 defines "release from confinement" as meaning that "a person was released from the custody of a jail or the corrections department pending trial on charges against the person, sentencing for or an appeal of a conviction against the person or adjudication of an alleged probation or parole violation by the person." (Emphasis added.) The paragraph goes on to explain that this includes release on the person's own recognizance, on a secured or an unsecured bond, on furlough, on work release or subject to court-ordered conditions of release. It is not clear if this provision requires that the person be in the physical custody of the jail or the corrections department prior to release. A person charged with a crime and released on his or her own recognizance pending trial may never see the inside of a jail, yet that person is still on release and under the court's jurisdiction, and if that person commits a crime while on release, should be subject to the enhanced penalties provided by HB91. If that is the intent of the drafters, the provision should be clarified.

## **OTHER SUBSTANTIVE ISSUES**

None noted.

## **ALTERNATIVES**

None noted.

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

A defendant who commits a felony or one of the misdemeanors listed in HB91 while escaped from confinement or while released from confinement will be sentenced under existing sentencing statutes, without the enhancement provided by HB91.

## **AMENDMENTS**

None proposed.