

LFC Requester:	
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**AGENCY BILL ANALYSIS
2019 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. 16, 2019
Bill No: HB103

Sponsor: William "Bill" R. Rehm
Short Title: 3 Strikes Equals Life Sentence

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	Unknown	Unknown	Unknown	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

BILL SUMMARY

Synopsis:

HB103 amends Section 31-18-23 NMSA 1978, the “three strikes” law, to include violent felony convictions incurred by a juvenile if the defendant was sentenced as an adult under New Mexico law, or sentenced as an adult under the law of another state. HB103 expands the definition of “violent felony” to include:

- Voluntary manslaughter;
- Involuntary manslaughter;
- Aggravated battery;
- Shooting at a dwelling or occupied building resulting in great bodily harm;
- Aggravated battery against a household member;
- Abuse of a child that results in great bodily harm to the child;
- Negligent abuse of a child that results in the death of the child; intentional abuse of a child that results in the death of the child;
- Aggravated arson;
- Aggravated battery upon a peace officer;
- Homicide by vehicle or great bodily harm by vehicle while: 1) under the influence of intoxicating liquor; 2) under the influence of any drug; 3) driving recklessly or 4) resisting, evading or obstructing an officer; and
- Injury to pregnant woman by vehicle while: 1) under the influence of intoxicating liquor; 2) under the influence of any drug; 3) driving recklessly or 4) resisting, evading or obstructing an officer.

Although the “three strikes” law already includes some criminal sexual penetration crimes in its definition of “violent felony,” HB103 expands the definition to include more criminal sexual penetration crimes.

HB103 also amends Section 31-21-10 NMSA 1978, governing parole authority and procedure, to allow parole for a person sentenced to life pursuant to the “three strikes” law who has served ten or more years and is sixty years of age or older. A person granted parole shall remain under the guidance and supervision of the board for the rest of his or her life.

The act applies to persons who have been convicted on, before or after July 1, 2019, of one of the violent felonies described in the act for the purpose of determining sentencing enhancements pursuant to that section for subsequent violent felony convictions on or after

July 1, 2019.

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.

HB103 significantly expands the scope of New Mexico's "three strikes" law. Some defendants facing a third violent felony charge may plead to a lesser charge to avoid the consequences. Others may insist on trial to attempt to avoid a third conviction. So, it is not clear whether HB103 will increase or decrease trials (and costs) for the district attorneys.

SIGNIFICANT ISSUES

Juveniles

HB103 counts juvenile convictions, if the juvenile was sentenced as an adult. Therefore, an act committed when a person was under 18 could lead to a life sentence years later if the person commits two additional dangerous felonies. Currently, a felony committed by a person under 18 does not count under the "three strikes" law, even if the person was sentenced as an adult. The rationale for excluding juvenile convictions from a "three strikes" law is that juveniles are immature, which can lead to rash decision-making; are vulnerable to peer pressure; lack the cognizance to avoid dangerous situations; and their character is still developing. In addition, a mandatory sentence does not allow consideration of the family and home environment that may have contributed to the crime.

Note that the U.S. Supreme Court has prohibited sentencing a juvenile to life without parole (for the reasons discussed above). Under HB103, if a juvenile were convicted as an adult on three violent felonies while still a juvenile, he or she would be eligible for parole at age 60.

Parole

Currently, New Mexico's "three strikes" law does not allow parole. HB103 provides that a person sentenced under its provisions becomes eligible for parole at age 60 if the person has served at least 10 years of the sentence. If granted parole, the person will be under the guidance and supervision of the board for the rest of his or her life.

Additional felonies

HB103 adds many felonies to the law's definition of "violent felony," so many more defendants may be subject to the "three strikes" law.

Applicability

The applicability section of HB103 is not entirely clear. It begins by stating that the act applies to persons who have been convicted of one of the violent felonies described in the act (and it does not matter when that conviction occurred), for purposes of determining sentencing enhancements for subsequent violent felony convictions on or after July 1, 2019. It appears that the "first strike" may be a conviction on any date, including a date before July 1, 2019. It also appears that the "third strike" must be a conviction occurring after July 1, 2019. It is not clear whether the "second strike" must also occur after July 1, 2019. It could be read that the first strike conviction may occur at any time, but the second and third strike convictions must occur after July 1, 2019.

If that is not the intent of the drafters, the intent should be made clear.

If only the third strike needs to occur after July 1, 2019, it is possible that a defendant who committed three crimes that were not covered by the “three strikes” law before HB103 could face a life sentence if the conviction for that third crime occurs after July 1, 2019.

PERFORMANCE IMPLICATIONS

As discussed above, some defendants facing a third violent felony charge may plead to a lesser charge to avoid the consequences. Others may insist on trial to attempt to avoid a third conviction. So, it is not clear whether HB103 will increase or decrease trials for the district attorneys. There may be litigation over the applicability of the statute.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The “three strikes” law will be limited to those felonies already listed in the statute; it will not apply to juveniles; parole will not be available.

AMENDMENTS

None proposed.