
Bill Analysis 2018 Regular Session

SPONSOR: Representatives Greg Nibert, Bill Rehm, and Rod Montoya

SHORT TITLE: Alteration of Basic Sentence

SYNOPSIS OF BILL: HB 91 requires the court to increase a felony defendant's sentence by a minimum of two years and up to five years when the offense was committed while on probation or parole, or while released and awaiting trial. For certain misdemeanors, requires court to increase sentence by at least 30 days and up to six months if the new charge was committed while on probation or parole, or while released and awaiting trial. The increased sentence may not be deferred or suspended and does not preclude other increased sentences.

WEAKNESSES: This legislation is aimed at what many people have called "catch-and-release" or "turnstile" defendants. While there may be a small number of individuals that are arrested, released and then commit new crimes while awaiting trial or on probation, this legislation is flawed for several reasons:

- Under current law, prosecutors and courts already have a variety of options available to them when a defendant commits a crime while awaiting trial, or on probation or parole. A new offense already provides a basis for sanctions in the case for which defendants are on probation or parole in addition to the new criminal charge itself. In fact, inmates incarcerated on violations of probation or parole, many of them merely technical, make up a significant and growing percentage of the prison population in New Mexico.¹
- In making decisions on whether to release a defendant while awaiting trial, and whether to require certain levels of supervision (i.e., pretrial services), courts already account for factors such as previous failures to appear, prior convictions, or probation and parole violations.
- By requiring a court to increase a felony or misdemeanor sentence, this legislation would take away court discretion. This legislation makes no distinction between crimes; thus a defendant with a violent history would be treated the same as a nonviolent defendant with a mental health or substance abuse issue. Under HB 91, a person arrested repeatedly for drug possession would be sentenced to longer and longer prison sentences instead of the court having discretion to allow for other alternatives.
- This legislation would likely have a significant fiscal impact and lead to an increase in New Mexico's prison population, which is already at or over capacity.¹

ADDITIONAL INFO: Having effective re-entry programs available for inmates is essential to stopping the revolving door of the criminal justice system. Re-entry programs provide services that help people secure an education, employment, housing, treatment for substance abuse, and mental health services. These programs allow formerly incarcerated people to more easily meet needs that, when unfulfilled, are often directly linked to causes of reoffending.²

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
While there may be a small number of violent criminals that have been released and then re-offend, this legislation takes away discretion from the courts for making sentencing decisions. New Mexico should instead invest in effective re-entry programs that get at the root causes linked to recidivism.	Media, politicians, and law enforcement officials use the term “catch-and-release” over and over again to blame judges for being “weak” on crime. Blaming judges is an easy way for community leaders to avoid hard questions about what is driving crime. We need less finger pointing and more thoughtful analysis to understand how to make our communities safer.	HB 91 would likely have a significant fiscal impact on the Department of Corrections. According to the NM Sentencing Commission, our state’s prisons will exceed capacity in the near future at its current pace. Bills like HB 91 will quicken the pace.	Courts and prosecutors already have the tools at their disposal to account for violations of probation and parole, or for making release decisions based on a person’s criminal history. We know that a significant and growing percentage of inmates in New Mexico are there due to technical violations of probation and parole.	D

1 New Mexico Prison Population Forecast FY2018 – FY2027, New Mexico Sentencing Commission. July 2017. Retrieved at: <https://nmsc.unm.edu/reports/2017/new-mexico-prison-population-forecast-fy2018---fy2027.pdf>

2 A Vision to End Mass Incarceration in New Jersey, ACLU of New Jersey. December 2017. Retrieved at: https://www.aclu-nj.org/files/5915/1318/4660/2017_12_13_mass_incarceration_vision.pdf