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FISCAL IMPACT REPORT

SPONSOR Maestas **LAST UPDATED** _____
ORIGINAL DATE 2/1/24
BILL
SHORT TITLE Increased Attempted Murder Penalty **NUMBER** Senate Bill 96
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

| Agency/Program | FY24 | FY25 | FY26 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|------|------|------|-------------------|---------------------------|---------------|
| NMCD | ** | ** | ** | ** | Recurring | General Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

**Enactment of this bill will result in substantial fiscal impact in out years. See Fiscal Implications.

Conflicts with HB200.

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (LOPD)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 96

Senate Bill 96 increases the penalty for the third degree felony crime of attempted murder in the second degree from the basic term of imprisonment of three years to nine years. The bill also increases the basic sentence of imprisonment for a second degree felony resulting in the death of a human being from 15 years to 18 years.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the number of individuals in prison and the length of time served in prison that might result from this bill. The creation of any new crime, expansion of a crime's scope or statute of limitations, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per inmate per year across all facilities. This bill will likely increase the length of time offenders spend incarcerated and may slightly increase the number of offenders admitted to prison.

Attempted Second-Degree Homicide. Based on the number of individuals admitted to prison for attempted second degree murder in FY21, this analysis estimates the change proposed in the basic sentence for this crime will impact one individual annually. Based on estimates of actual time served for serious violent felonies provided by the Sentencing Commission (NMSC), this individual will spend approximately 2.4 years in prison due to the increased sentence, at a cost of \$64 thousand.

Second-Degree Felony Resulting in the Death of a Human Being. Data on the number of individuals admitted to prison for a second degree felony resulting in the death of a human being in FY21 was not available, so this analysis estimates the proposed change in sentencing for this crime will impact at least the number of offenders admitted for second degree homicide in FY21 annually (a low-end estimate). Based on estimates of actual time served for serious violent offenders provided by the Sentencing Commission, these 36 individuals will spend approximately 2.4 years in prison each due to the change in sentence, a cost of \$64 thousand per offender, and \$2.3 million overall.

Additional system costs beyond incarceration, including additional costs to the district attorneys, LOPD, and the courts caused by increased trials, are not included in this analysis but could be significant.

SIGNIFICANT ISSUES

Attempted Second Degree Murder. As the LOPD explains:

Currently, attempted second-degree murder is punishable as a third-degree felony, which is three years' imprisonment. Attempted first-degree murder is currently punishable as a second-degree felony, which is nine years' imprisonment. This bill proposes to abolish any distinction in punishment between attempted first-degree murder and attempted second-degree murder. Courts have generally recognized a necessary distinction in the mental states and therefore the moral culpability of these crimes, noting "the important distinction between the classes of second- and first-degree murders" and that "first-degree murder is reserved only for the most reprehensible murders that are deserving of the most serious punishment under New Mexico law." State v. Marquez, 2016-NMSC-025.

Similarly, NMSC points out that the existing basic sentence for a third degree felony for the death of a human being is only six years, so under SB96, an attempt to commit second degree murder would have a longer basic sentence than third degree felonies that actually results in someone's death. AOC also comments that imposing a nine-year sentence is a substantial, three-fold increase in the current basic sentence of three years for this crime.

Second Degree Murder. A conviction of second degree murder, classified as a second degree felony resulting in the death of a human being, currently results in a basic sentence of 15 years imprisonment. This bill increases that punishment by three years. As LOPD points out, the current penalty is already much higher than that for other second degree felonies—15 years versus nine years.

While DPS and NMCD believe the changes in this bill “will have an immediate impact on public safety,” research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team has found in the 2nd Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than severe penalties. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict: NMAG reports that HB200 increases the basis sentence for second degree murder from 15 to 20 years.

MD/al/ne