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## FISCAL IMPACT REPORT

**SPONSOR** Maestas **ORIGINAL DATE** 1/28/2016  
**LAST UPDATED** \_\_\_\_\_ **HM** 22  
**SHORT TITLE** Study Three New Levels of Criminal Sentencing **SB** \_\_\_\_\_  
**ANALYST** Rogers

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Bernalillo County Metropolitan Court (BCMC)

Attorney General's Office (AGO)

Law Offices of the Public Defender (LOPD)

Administrative Office of the Courts (AOC)

### **SUMMARY**

#### Synopsis of Memorial

House Memorial 22 seeks to create a legislative interim committee in order to create a dialogue between the courts, prosecutors, public defenders and private criminal defense attorneys in order to add three new degrees of felony offenses. The purpose of adding to the penalty structure would be to ensure that violent crimes receive harsher sentences than nonviolent crimes. The specific proposal of the newly tiered sentencing structure by HM 22 is as follows

1. Up to 18 years imprisonment for a first degree felony conviction;
2. 12 years imprisonment for a second degree felony conviction;
3. Nine years imprisonment for a third degree felony conviction;
4. Six years imprisonment for a fourth degree felony conviction;
5. Three years imprisonment for a fifth degree felony conviction;
6. Eighteen months imprisonment for a sixth degree felony conviction;
7. One year imprisonment for a seventh degree felony conviction.

## **FISCAL IMPLICATIONS**

The fiscal impact of HM 22 should be minimal. The memorial requests that the legislative interim committee concerned with criminal justice issues, namely the Courts, Corrections, and Criminal Justice (CCJ) committee, facilitate dialogue among the judicial branch to consider the creation of three new levels of felony criminal sentencing. The CCJ committee, if approved by the Legislative Council, will arrange hearings for discussion of the topic and members of the judicial branch will be invited to attend, which should have little to no impact on the judiciary's budget for time and travel.

The AGO stated that participating in the interim committee may result in a fiscal impact to the judiciary depending on the time commitment required or in travel costs to attend meetings. In addition, a judge's participation in the interim committee may result in additional resources necessary to cover a judge's absence in the court.

The AOC stated that the memorial would create an unfunded interim legislative committee to consider the complex structure of criminal sentencing for felony level crimes. The in depth assessment of the sentencing structure may require extensive research, data analysis and additional resources to be able to fully execute the intent of HM 22.

The Metropolitan Court responded that, as a Court of limited jurisdiction, it does not have jurisdiction to sentence defendants for felonies. However, if a representative of this Court were invited participate in a dialogue with this committee on these felony sentencing issues, the cost to the Court for any travel or related expenses presumably would be minimal.

The LOPD stated that past participation in such interim legislative committees has proven to be able to be absorbed within the ordinary course of business.

The AGO added that if the discussions over the interim yield a proposal to shift to a system containing seven degrees of felony offenses would essentially require all of the criminal statutes to be re-written. This would be tremendously expensive and time consuming. An alternative to this proposal may be to increase the penalties for each degree of felony. This would allow judges, in the cases of second, third and fourth degree felonies, greater discretion to craft a just sentence for each crime. This would allow judges to ensure that "the most egregious crimes carry the longest sentences."

## **SIGNIFICANT ISSUES**

The AOC believes that the memorial would likely require attorneys from the AGO to participate in the discussion revising sentencing structure. If the proposal is adopted, the new structure could afford prosecutors the possibility of arguing for longer sentences for certain offenses. As proposed, certain offenses may be restricted to a shorter sentence.

LOPD notes the criminal justice system must prioritize violent crimes, that criminal justice reforms have been sweeping the nation, and that there exists bipartisan support for ensuring that the most egregious crimes are the ones that carry the longest sentences. The Memorial notes New Mexico felonies are presently broken into four categories with sentences of eighteen months, three years, nine years and eighteen years and posits a change in the sentencing scheme would facilitate proper structuring of crimes that have become out of step with sensibility, requiring the

introduction of “special penalty” crimes. While homicide would remain a “special penalty” crime under the proposed scheme, the Memorial posits sensible reform could follow basic reform of the sentencing structure and therefore proposes the interim legislative committee that would be able to provide detailed scrutiny and analysis of the consideration.

### **TECHNICAL ISSUES**

The AGO stated that defining the terms “violent crimes” and “nonviolent crimes” would add clarification to the memorial.

### **OTHER SUBSTANTIVE ISSUES**

The AGO said that the stated purpose of HM 22 is to discuss a revised sentencing structure that provides greater protections to the citizens of New Mexico for violent crimes. However, the possible proposal set forth by HM 22 clearly indicates that the sentence for a first degree felony conviction would be “up to” 18 years at the New Mexico Department of Corrections. The current sentencing structure does not give the courts authority to suspend or defer any part of first degree felony conviction. The end result, absent mitigation or aggravation, would necessarily be a prison sentence of 18 years under the current system. By allowing the courts to suspend or defer a first degree conviction the proposal would potentially provide fewer protections against violent criminals by shortening the potential sentence. Additionally, the proposal is silent on fines and parole terms. The proposal is also silent on whether these penalties will be enhanced if the crime results in the death of a child, the death of a human being, or is a sexual offense.

TMR/jo