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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/17

SPONSOR HJC LAST UPDATED \_\_\_\_\_ HB 92/HJCS

SHORT TITLE Stricter Game & Fish Violation Penalties SB \_\_\_\_\_

ANALYST Armstrong

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See narrative				Administrative Office of the Courts, District Attorneys, Public Defender Department

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Department of Game & Fish (DGF)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Substitute Bill

The House Judiciary Committee Substitute for House Bill 92 (HB92/HJCS) makes it a fourth degree felony to wastefully take or kill bighorn sheep, ibex, oryx, Barbary sheep, elk, deer, or pronghorn antelope outside of the legal season or without a valid license. Waste of the animal is defined as removing from the animal only the head, antlers, or horns or leaving any of the four quarters, backstraps or tenderloins of the carcass to waste. The bill also makes it a misdemeanor to (1) hunt or fish any game mammal, bird, or fish and fail to transport home to eat, or otherwise provide for the human consumption of, the edible meat, or (2) to wound a game mammal and fail to make a reasonable attempt to track the mammal. Finally, the bill amends existing statute to state that any violation of DGF rules is a misdemeanor and shall be punishable pursuant to Section 31-19-1 NMSA 1978, which provides standards for misdemeanor sentencing.

**FISCAL IMPLICATIONS**

According to AOC analysis:

Increased penalty cases take up a considerable amount of judicial time. As penalties become more severe, defendants may invoke, or decline waiving, their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase. These additional costs are not capable of quantification. There will be also a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

District attorneys' offices and the Public Defender Department would experience similar increased costs.

**SIGNIFICANT ISSUES**

There are currently seven western states (Arizona, Colorado, Idaho, Nevada, Texas, Utah and Washington) that have felony provisions relating to the unlawful taking of state game or fish resources. The crimes targeted by this bill are all currently misdemeanors and DGF officers have to investigate and prosecute these cases within the two year statute of limitations. Department officers are also unable to prosecute individuals who reside or flee to another state because extradition is not allowed for misdemeanors. HB92 makes wasteful taking or killing of certain species a fourth degree felony, punishable by imprisonment for up to 18 months and a fine of up to \$5,000.

DGF finds and investigates approximately 70 to 100 big game animals per year that are poached for their heads, horns or antlers, and asserts that a felony designation for specific types of waste of game will likely have an immediate deterrent effect. If this bill is not enacted, department officers will continue to investigate these crimes as misdemeanors and have to work within the two year statute of limitations, and will not have the ability to prosecute or extradite individuals from out of state that may be charged with these crimes.

Currently, violations of Chapter 17 carry a maximum of six months in jail. HB92 proposes to raise that maximum jail time to 364 days. Under the state and federal constitutions, a person accused of a crime is automatically eligible for a jury trial if facing a possibility of more than six months in jail. Increasing penalties will raise the number of offenders entitled to a jury trial. According to AOC, the incentives for taking the case to trial increase with increased penalties, and courts may require more resources to handle additional jury trials.

Under Rule 6-108, NMRA 2016, law enforcement officers (including DGF officers) can prosecute non-jury cases in magistrate courts. However, if a case is tried before a jury, it must be prosecuted by a government attorney, such as a DGF attorney or district attorney's office. All cases under provisions of HB92 would be jury eligible and defendants would have to waive their right to a jury trial. If they do not waive their right to jury, a DGF attorney or the district attorney's office would have to prosecute these offenses.

JA/sb/jle