

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 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 1/24/24

Bill No: HB 200-280

Sponsor: Tara Jaramillo et al
Short Second Degree Murder
Title: Sentencing

Agency Name and Code 280 - LOPD
Number: _____
Person Writing Tania Shahani
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/**Conflicts with**/Companion to/Relates to: **SB 96**
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: This bill would change the sentencing statute, NMSA § 31-18-15(A) to increase the basic sentence for a “second degree felony resulting in the death of a human being” from fifteen to twenty years.

FISCAL IMPLICATIONS

Penalty increases can make defendants more likely to go to trial rather than accepting a plea agreement and can provide prosecutors with greater plea bargaining power. This would increase burdens and resource expenditures on all actors in the criminal justice system, including courts and public defenders. Increasing penalties for crimes also similarly imposes increased costs on communities and social institutions that are borne by the public at large. That said, the primary fiscal impact of the penalty increase is likely to fall on Corrections if defendants end up with longer sentences. LOPD does not have accurate data regarding the number of people sentenced to Corrections for second-degree murder and attempted second-degree murder annually, but with the simultaneous amendment of the statute of limitations, that number may also increase.

SIGNIFICANT ISSUES

This bill only applies to second-degree murder. *See infra*, “Other Significant Issues.”

Second-degree murder is currently classified as a “second degree felony resulting in the death of a human being” which is punishable currently as fifteen years’ imprisonment. *See* NMSA 1978, § 30-2-1 (B) (“whoever commits murder in the second degree is guilty of a second degree felony resulting in the death of a human being.”); NMSA 1978, § 31-18-15 (A) (second-degree felony resulting in the death of a human being basic sentence is fifteen years.) This bill proposes to increase that punishment by three years. The penalty for second-degree murder is already much higher than the penalty for other second-degree felonies, at fifteen years versus nine years. There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

Increasing the sentence for second degree murder is unnecessary because it will not bring about significant behavioral changes to make society safer but would instead increase the burden on agencies that are perpetually underfunded and understaffed. Studies have revealed that increasing incarceration penalties is not effective in preventing unwanted behavior or violent crime. *See, e.g.,* <https://nij.ojp.gov/topics/articles/five-things-about-deterrence>.

There is “no conclusive evidence that stricter punishment deters criminal conduct.” *See* https://wp.nyu.edu/compliance_enforcement/2021/12/28/the-behavioral-code-four-behavioral-science-insights-for-compliance-and-enforcement/. Instead, “research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished.” *Id.*

PERFORMANCE IMPLICATIONS

None noted

ADMINISTRATIVE IMPLICATIONS

None known

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 96 also proposes to amend the penalty for second-degree murder; the two bills are in conflict.

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session

OTHER SUBSTANTIVE ISSUES

Similar bills have been previously introduced: HB 79 (2022), HB 36 (2020), and HB 112 (2018)

Currently, second-degree murder is the only crime defined as a “second-degree felony resulting in the death of a human being.” Before the 1994 amendments, Section 31-18-15(A) had begun with the language, “If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows,” and then listed the categories of offenses. *See* 2019 N.M. Laws, ch. 211, § 7; *see also* 1993 N.M. Laws, ch. 182, § 1 (same). Applying that provision, courts sometimes imposed the “special” resulting-in-death basic sentence to crimes otherwise defined only as “second degree felonies” if the jury also found the conduct resulted in death.

But in 2022, the legislature changed the introductory language to say: “**As used in a statute that establishes a noncapital felony, the following defined felony classifications and associated basic sentences of imprisonment are as follows.**” 2022 N.M. Laws, ch. 56, § 29 (emphasis added). This amendment ensures that basic sentences like the 15-year “second-degree felony resulting in the death of a human being,” is a “defined felony classification” that must be “used in a statute that establishes a noncapital felony” in order for that “associated basic sentence” to attach. Second-degree murder is the only crime defined as a second-degree felony resulting in the death of a human being within the statute that establishes the crime.

ALTERNATIVES

None noted

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None noted