

LFC Requester: \_\_\_\_\_

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

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*and*

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*{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**     X  **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** January 24, 2024

**Bill No:** SB 96-280

**Sponsor:** Antonio Maestas  
**Short Title:** Increase in Attempted Murder Penalty

**Agency Name and Code**    LOPD-280  
**Number:** \_\_\_\_\_  
**Person Writing:**    Allison Jaramillo  
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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)**

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: SB 96, Section 1, increases the penalty for attempted murder in the second degree to nine years. It does this by creating an entirely new statutory section.

Section 2 increases the penalty for second degree murder from fifteen years to eighteen years by amended the existing statute.

**FISCAL IMPLICATIONS**

Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more higher-penalty trials result, LOPD may need to hire more trial attorneys with greater experience to ensure compliance with constitutional mandates of effective assistance of counsel. These felonies would be handled by, at a minimum, mid-level felony capable attorneys (Associate Trial Attorneys), or higher.

An entry-level Assistant Trial Attorney’s mid-point salary *including benefits* is \$121, 723.30 in Albuquerque/Santa Fe and \$130, 212.59 in the outlying areas (due to salary differential required to maintain qualified employees). A mid-level felony capable Associate Trial Attorney’s mid-point salary *including benefits* is \$136, 321.97 in Albuquerque/Santa Fe and \$144, 811.26 in the outlying areas. A senior-level Trial attorney’s mid-point salary *including benefits* is \$149, 063.13 in Albuquerque/Santa Fe and \$157, 552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$12, 780.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$126, 722.33. Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation.

The proposed legislation could also have a fiscal impact on DOC, of course. Presumably the courts, DAs and AGs would be affected in similar measure to LOPD. Assessment would be necessary after the implementation of the proposed higher-penalty scheme.

**SIGNIFICANT ISSUES**

Currently, attempted second-degree murder is punishable as a third-degree felony, which is three years’ imprisonment. *See NMSA 1978, § 30-28-1(B)* (“if the crime attempted is a second degree felony, the person committing such attempt is guilty of a third degree felony.”); *NMSA 1978, § 31-18-15 (A)* (third-degree felony basic sentence is three years.) Attempted first-degree murder

is currently punishable as a second-degree felony, which is nine years' imprisonment. *See* **NMSA 1978, § 30-28-1(A)** ("if the crime attempted is a capital or first degree felony, the person committing such attempt is guilty of a second degree felony."); **NMSA 1978, § 31-18-15 (A)** (second-degree felony basic imprisonment is nine years.) 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. *See* **State v. Marquez**, 2016-NMSC-025, ¶¶ 15, 24 376 P.3d 815 (recognizing "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.")

Additionally, 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.

## **PERFORMANCE IMPLICATIONS**

As noted above, increasing the penalty of a crime is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. LOPD may need to higher more attorneys with a greater level of experience to take these serious cases.

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE 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.

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**