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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 2/13/18  
**LAST UPDATED** \_\_\_\_\_

**SPONSOR** HJC **HB** 112/HJCS

**SHORT TITLE** Increase 2<sup>nd</sup> Degree Murder Penalties **SB** \_\_\_\_\_

**ANALYST** Sánchez/Daly

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Indeterminate Increase See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB115

### SOURCES OF INFORMATION

LFC Files

### Responses Received From

Public Defender Department (PDD)  
 New Mexico Attorney General's Office (NMAG)  
 New Mexico Sentencing Commission (NMSC)  
 New Mexico Corrections Department (NMCD)  
 Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Judiciary Committee Substitute for House Bill 112 proposes to amend Section 30-28-1 NMSA 1978 to add a sentence for attempt to commit murder in the second degree making it a third degree felony with a minimum prison sentence of nine years (under the current sentencing structure, the penalty is three years imprisonment). The bill also increases the prison sentence for a second degree felony resulting in death of a human being from 15 years to 18 years. The bill reformats the language for easier reading and allows the basic sentences to be used only if the statute that establishes the noncapital felony uses the same classification as the basic sentence, recommendation in the original bill.

The effective date of the provisions in this bill should it become law is July 1, 2018.

**FISCAL IMPLICATIONS**

The Public Defender Department (PDD) anticipates a need for additional appropriations should this bill become law. Although it does not annualize the cost, PDD does provide the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund operating budget to add one attorney is \$175.1 thousand per year.

Based on analysis by the New Mexico Sentencing Commission (NMSC), this bill would add 2.55 years to the length of the prison sentence. The four-year average of the inmates admitted into prison for a second degree felony is 44.6. Based on the annual per inmate cost and the average admissions, this bill would increase costs at the New Mexico Corrections Department by almost \$5.1 million.

<b>Most Serious Prison Admission Charge</b>	<b>Estimated Annual Admissions (average of last 3 calendar years)</b>	<b>Increased Sentence length</b>	<b>Estimated Increased Cost Per Offender</b>	<b>Estimated Increased Cost for all Offenders</b>
Second Degree Murder	44.6	2.55 years	\$114,186	\$5,092,696

Enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. According to the NMCD, the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,776 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD’s general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

**SIGNIFICANT ISSUES**

The New Mexico Attorney General’s Office (NMAG) states that the sentence in Section 2 which reads: “A basic sentence of imprisonment provided in Subsection A of this Section may be imposed only if the statute that establishes the noncapital felony of which a person was convicted

uses the felony classification defined term associated with that basic sentence” potentially could add a great deal of confusion and ambiguity to the sentencing statute. There is a possibility that this language may render the entire sentencing statute unusable or could lead to increased litigation at all levels of the courts.

The Administrative Office of the Courts (AOC) states that having a third degree felony that carries the same sentence as a second degree felony could cause some confusion: Section 1 of the bill imposes a minimum sentence of 9 years for the third degree felony crime of attempt to commit murder in the second degree, a substantial, three-fold increase in the current basic sentence for the crime (three years). Additionally, according to AOC, language added in Section 2 (B) also guards against the imposition of a basic sentence for a noncapital felony whose felony classification or degree differs from the felony classification or degree associated with that basic sentence.

### ADMINISTRATIVE IMPLICATIONS

This bill may have an impact on the following performance measures:

- NMCD:
  - Percent of prisoners reincarcerated back into the corrections department within thirty-six months due to technical parole violations;
  - Percent of prisoners reincarcerated back into the corrections department system within thirty-six months due to new charges or pending charges;
  - Percent of inmates testing positive for drug use or refusing to be tested in a random monthly drug test;
  - Percent of sex offenders reincarcerated back into the corrections department within thirty-six months; and
- District Courts:
  - Cases disposed of as a percent of cases filed;
  - Percent change in case filings by case type;
- District Attorneys:
  - Average caseload per attorney;
  - Number of cases prosecuted;
  - Number of cases prosecuted per attorney;
- Public Defenders:
  - Percent of cases taken by contract attorneys;
  - Percent of cases that go to trial with clients defended by contract attorneys.

### RELATIONSHIP

Relates to HB115 2<sup>nd</sup> Degree Murder

### TECHNICAL ISSUES

AOC suggests that the structure of the lead-in sentence in Section (2)(A) is awkward, as either italicized portion is all that is necessary as shown below:

“As used in a statute that establishes a noncapital felony, the *following* defined felony classifications and associated basic sentences of imprisonment for a convicted person are *as follows...*” (Emphasis added.)

**OTHER SUBSTANTIVE ISSUES**

According to the PDD, HB112/HJCS does not appear to have a deterrent value.

**ALTERNATIVES**

Results of an internet survey of the penalties across the country for second degree murder reveals the following: 21 states allow for the possibility of life in prison upon conviction for second degree murder. Of the states that do not allow for life in prison, two allow for a period of incarceration of up to 99 years. Accordingly, nearly half of the jurisdictions in the country effectively allow for life sentences for the crime of second degree murder. 43 states, as well as the District of Columbia, require a mandatory minimum period of incarceration for second degree murder. Georgia, Connecticut, South Carolina and Texas do not have specific statutes for second degree murder. This leaves only New Mexico, Maryland and Minnesota as states not requiring a mandatory period of incarceration for persons convicted of second degree murder. The potential sentence in Maryland is 0-30 years of incarceration. The potential sentence in Minnesota is 0-40 years of incarceration. The only other state with a maximum period of incarceration for second degree murder of 18 years or less is Washington, which allows for an 18 year maximum sentence. However, Washington requires a mandatory minimum period of incarceration of ten years.

ABS/al