

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 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: Date 1-22-17
Original **Amendment** **Bill No:** HB159
Correction **Substitute**

Sponsor: Clahchischilliage & Youngblood **Agency Code:** 264
Short Expand Crime of **Person Writing** Gail MacQuesten
Title: Voyeurism **Phone:** 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Minimal	Minimal	Minimal	Minimal	recurring	General

(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:

HB159 adds “attempt” to the crime of voyeurism in NMSA 1978, Section 30-9-20.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB159 expands the crime of voyeurism to include attempted voyeurism when the victim is an adult, and makes the crime of voyeurism easier to prove. If this increases prosecutions under the statute, there may be increased costs for district attorneys, courts and the corrections system.

SIGNIFICANT ISSUES

Currently, the statute prohibits “intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person” in particular defined contexts. The defendant must actually view the intimate areas of another, or use an instrumentality to record an image of the intimate areas of another, in order for the crime to occur.

New Mexico’s existing attempt statute, NMSA 1978, Section 30-28-1, applies only to felonies. Voyeurism is a misdemeanor when the victim is an adult, so under existing law, there is no crime of attempt to commit voyeurism when the victim is an adult. When the victim is under eighteen, voyeurism is a fourth degree felony. The attempt statute applies, and attempted voyeurism of a minor is a misdemeanor.

HB159 criminalizes an “attempt to view,” making all such attempts a misdemeanor. A peeping Tom who climbs a tree to look into a second-floor bedroom can be prosecuted even if the defendant doesn’t see anything. This expands the scope of the statute, and makes the crime easier to prove. The state does not have to prove beyond a reasonable doubt that the defendant actually saw the intimate areas or another in cases involving an adult victim. If the victim is a minor, the state will still need to distinguish between attempted voyeurism and voyeurism, because attempt will be a misdemeanor and the completed crime will be a fourth degree felony.

The wording of the amendment addressing the use of an instrumentality could cause issues of interpretation. It is not clear whether “attempt” is meant to apply only to “view” or is meant to apply also to attempts to photograph, videotape, film, webcast or record:

“voyeurism consists of ...intentionally using an instrumentality to view, attempt to view, photograph, videotape, film, webcast or record the intimate areas of another person..”

It could be argued that this language prohibits using an instrumentality to view or attempt to view the intimate areas of another, or to successfully photograph, videotape, film, webcast or record the intimate areas of another. If the intent of HB159 is to criminalize an attempt to photograph, videotape, film, webcast or record, it would be clearer to place the “attempt” language prior to all the actions that can be attempted:

“voyeurism consists of ...intentionally using an instrumentality or attempting to use an instrumentality to view, ~~attempt to view~~, photograph, videotape, film, webcast or record the intimate areas of another person..”

PERFORMANCE IMPLICATIONS

As discussed above, HB159 criminalizes attempted voyeurism when the victim is an adult, and makes voyeurism easier to prove. There may be issues involving the interpretation of the “attempt” language when applied to using an instrumentality to view the victim.

ADMINISTRATIVE IMPLICATIONS

Jury instructions for voyeurism will need to be revised.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

See Substantive Issues, above.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Attempted voyeurism of adults victims will not be a crime.

AMENDMENTS

Amend Section 1, paragraph A, lines 19-24, as follows:

A. Voyeurism consists of intentionally using the unaided eye to view or attempt to view or intentionally using or attempting to use an instrumentality to view, ~~attempt to view,~~ photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person.