

LFC Requester: _____

**AGENCY BILL ANALYSIS
2016 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 Jan. 27, 2016

Bill No: HB 228

Sponsor: Antonio "Moe" Maestas

Agency Code: 264

Short Revise Second Degree Murder

Person Writing Gary Cade

Title: Penalties

Phone: 505-507-7752 Email cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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: HB 228 would increase the basic sentence of imprisonment specified for a second degree felony resulting in death of a human being to 18 years instead of the 15 year sentence currently prescribed.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

HB 228 would increase the potential prison time from 15 years to 18 years for anyone convicted of a second degree felony resulting in death. As a non-capital or first-degree felony even the sentence for someone convicted of a second-degree felony resulting in death could be deferred or suspended in whole or in part. (See, Sect. 31-20-3(A) and (B), NMSA 1978)

There are currently only a few statutes that specify or otherwise prescribe the punishment as a second degree felony resulting in death. They are: murder in the second degree (See, Sect. 30-2-1(B), NMSA 1978); criminal abortion (See, Sect. 30-5-3, NMSA 1978); abuse of a resident (See, Sect. 30-47-4(D), NMSA 1978); and, neglect of a resident (See, Sect. 30-47-5(D), NMSA 1978). In addition, appellate courts in New Mexico have repeatedly upheld sentences imposed as a second degree felony resulting in death for persons convicted of conspiracy to commit first degree murder when the murder was carried out. They noted that conspiracy to commit a first degree felony is a second degree felony (See, Sect. 30-2-1(A) and Sect. 30-28-2(B)(1), NMSA 1978), and the victim's death resulted from the agreement forming the conspiracy. (See, *State v. Shije*, 1998-NMSC-102; *State v. Castillo-Sanchez*, 1999-NMCA-085; *State v. McDonald*, 2004-NMSC-033. That sentence was also affirmed when the defendant was found guilty of conspiracy to commit felony murder. (See, *State v. Lopez*, 2005-NMSC-036)

Intentional abuse of a child 12 to 18 years old that results in the death of a child is classified as a first degree felony. It is therefore possible that someone might be convicted of conspiracy to commit that crime and it would also be punished as second degree felony resulting in death. It seems unlikely that someone could be convicted of conspiracy to commit negligent child abuse resulting in death even though that crime is also a first-degree felony. Negligent abuse of a child requires that the defendant knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child (See, e.g., *State v. Trossman*, 2009-NMSC-034; *State v. Gonzales*, 2011-NMCA-081; *State v. Nichols*, 2016-NMSC-001) so proving a conspiracy to act negligently and cause the death of a child will be difficult if not impossible.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS