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| LFC Requester: | |
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**AGENCY BILL ANALYSIS
2018 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. 17, 2018
Bill No: HB112

Sponsor: Maestas & Youngblood
Short Title: Increase 2nd Degree Murder Penalties

Agency Code: 264
Person Writing Gail MacQuesten
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY18 | FY19 | | |
| 0 | 0 | n/a | n/a |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY18 | FY19 | FY20 | | |
| 0 | 0 | 0 | n/a | n/a |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY18 | FY19 | FY20 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | 0 | unknown | unknown | unknown | recurring | general |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB115
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB112 increases the penalties for second degree murder and attempted second degree murder.

The basic sentence for second degree murder increases from 15 years to 18 years.

The penalty for attempted second degree murder increases from a basic sentence of 3 years imprisonment to “a minimum term of 9 years.”

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.

HB112 increases the penalties for second degree murder and attempted second degree murder. This may result in more trials, or it may result in more plea bargains. If it results in more trials, the costs for the district attorneys and the court system will increase. If it results in more plea bargains, it may reduce costs for the district attorneys and the court system.

As discussed below, the language of HB112 may result in litigation, which will increase costs for the district attorneys, the attorney general, and other participants in the criminal justice system.

To the extent the increased penalties result in increased incarceration, costs will increase for the corrections department.

SIGNIFICANT ISSUES

HB112 increases the penalties for second degree murder and attempted second degree murder. The basic sentence for second degree murder increases from 15 to 18 years (still well below the possible sentences for first degree murder, which can be life – with the possibility of parole after 30 years – or life without the possibility of parole). The penalty for attempted second degree murder increases from a basic sentence of three years to “a minimum term of imprisonment of nine years.”

There will likely be litigation on the meaning of HB112's language that "notwithstanding the provisions of Section 31-18-15 NMSA 1978," a person committing attempted second degree murder "shall be sentenced to a minimum term of imprisonment of nine years." HB112 put this penalty provision in the statute defining the crime, not in Section 31-18-15, which is the penalty statute. (See discussion under "Technical Issues," below.) Section 31-18-15 sets out "the basic sentence of imprisonment" for crimes, based on the degree of felony and the nature of the crime, and also provides that the basic sentence may be suspended, altered or deferred, and the court may impose a fine. Clearly, HB112 intends the sentence for attempted second degree murder to be raised from 3 years (as the current statute provides) to 9 years. The language that this is a "minimum term," notwithstanding the provisions of Section 31-18-15, suggests that HB112 intends to prevent suspension, deferral or reduction of that nine year sentence. It also raises the question of whether this "minimum term" may be increased. Imposing a minimum term that may be increased but not decreased, suspended or deferred is a significant change from New Mexico's sentencing structure. If that is the intent of the drafters, it should be clarified and made explicit. If that is not the intent of the drafters, the language of HB112 should be clarified so that it imposes a basic sentence of 9 years.

Another consequence of imposing a "minimum term" under the criminal statute instead of the "basic sentence" imposed by Section 31-18-15 is that applying sentence enhancements will be problematic. For example, NMSA 1978, Section 31-18-16 allows for "the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978" shall be increased if a firearm is used. Under HB112, the "basic sentence" under Section 31-18-15 is not imposed (the sentence is imposed pursuant to the criminal statute) so there is no "basic sentence" to enhance.

PERFORMANCE IMPLICATIONS

As discussed above, increased penalties may result in an increase in the number of trials, or it may increase the number of plea bargains.

It is likely that the meaning of the language imposing a "minimum term" notwithstanding the provisions of Section 31-18-15 will be litigated.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB115 proposes to eliminate time limits for prosecuting second degree murder cases.

TECHNICAL ISSUES

HB112 does not follow New Mexico's statutory structure for setting out punishments, which will lead to increased confusion in determining sentences. New Mexico's criminal statutes usually define a crime, and state whether it is a felony, a misdemeanor or a petty misdemeanor. If it is a felony, it will also state what degree of felony the crime is. It does not, typically, describe the penalty for the crime. Other statutes set out penalties, according to the degree of the crime. For example, NMSA 1978, Section 31-18-15 sets out the penalties for non-capital felonies, assigning different penalties based on whether the offense is a first, second, third or fourth degree felony.

If the legislature wants to make a distinction between felonies of the same degree, it makes that distinction in the penalty statute. So Section 31-18-15 sets out a basic penalty for second degree felonies (9 years) but also sets out penalties for some specific second degree felonies. A second degree felony for a sexual exploitation of a child, for example, carries a higher penalty: 15 years.

To change the basic sentence for attempted second degree murder, HB112 violates this statutory structure by putting a special punishment provision in the definition of the crime. HB112 amends NMSA 1978, Section 30-28-1, which defines and assigns levels to attempt crimes. HB112 doesn't change the definition of attempt to commit murder in the second degree, and it keeps it a third degree felony, it only changes the penalty: it provides that it will be subject to a minimum sentence of 9 years "notwithstanding the provisions of Section 31-18-15." If HB112 kept to the statutory structure in New Mexico, it would not have amended the criminal statute defining attempted second degree murder, it would have amended the penalty statute to change the penalty for the crime of attempted second degree murder. For example, HB112 could have amended Section 31-18-15 to provide that "for a third degree felony for attempted murder, nine years imprisonment."

As discussed above, HB112 creates further confusion by deviating from New Mexico's sentencing structure, which recognizes "basic sentences" for crimes that may be altered. Instead, HB112 attempts to impose a "minimum sentence," and it is not clear if that sentence can be reduced, suspended or deferred. As discussed above, the drafters' intent should be clarified.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Second degree murder will be subject to 15 years imprisonment; attempted second degree murder will be subject to three years imprisonment.

AMENDMENTS

See technical issues, above.

Delete Section 1 of HB112.

Amend Section 2 of HB112 to insert a new provision, 31-18-15(A)(11):

“(11) for a second degree felony for attempted murder, nine years imprisonment;”

Renumber the remaining subsections accordingly.