

LFC Requester:	
-----------------------	--

**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: HB16

Sponsor: Ferrary & Soules
Short Abortion
Title: Decriminalization

Agency Code: 264
Person Writing Gail MacQuesten
Phone: 505 466-0532 **Email** gailmacquesten@gmail.com

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	0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB56; HB75; HB76
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

HB16 repeals NMSA 1978, Sections 30-5-1 through 30-5-3, New Mexico's general abortion statutes.

Section 30-5-1 is a definition section, which includes definitions of "pregnancy" and "justified medical termination." An abortion may be a "justified medical termination" if continuation of the pregnancy is likely to result in the death of the woman or the grave impairment of the physical or mental health of the woman; if the child will probably have a grave physical or mental defect; or if the pregnancy is the result of rape or incest. Section 30-5-2 provides that a hospital is not required to admit any patient for purposes of performing an abortion, and allows persons who object to a justified medical termination on moral or religious grounds to refuse to participate without repercussions. Section 30-5-3 defines criminal abortion as the intentional termination of a pregnancy that is not a "justified medical termination." It provides that an abortion is a fourth degree felony, or a second degree felony if it results in the death of the woman.

HB16's repeal of NMSA 1978, Sections 30-5-1 through 30-5-3 has no impact on New Mexico's statutes addressing partial birth abortions, which will remain in place. See NMSA 1978, Sections 30-5A-1 through 30-5A-5.

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.

The district attorneys do not anticipate any financial impact from HB16.

SIGNIFICANT ISSUES

HB16 repeals New Mexico's criminal abortion statutes. New Mexico's criminal abortion statutes have essentially been moot since the United States Supreme Court's ruling in *Roe v. Wade*, 410 U.S. 113 (1973). That case found that a right to privacy under the Due Process Clause of the Fourteenth Amendment extended to a woman's decision to have an abortion, and severely limited state regulation of abortion. The precise limits to state regulation of abortion are still being litigated. However, New Mexico's ban on all abortions that don't fit the statute's definition of a "justified medical termination" -- including abortions performed prior to fetal viability -- is clearly unconstitutional.

Having criminal statutes in place that are unconstitutional and cannot be enforced is unnecessary, can cause confusion, and can be viewed as disregarding constitutional law. It is possible that New Mexico has kept its criminal abortion statute on the books so that it can enforce its provisions immediately if *Roe v. Wade* and its progeny are ever overturned. However, that supposes that New Mexico's old criminal abortion statutes will meet whatever new requirements are imposed by future law. And it assumes that New Mexico's old criminal abortion statutes are still constitutional since the 1973 enactment of New Mexico's equal rights amendment: "Equality of rights under law shall not be denied on account of the sex of any person." N.M. Const. Article II, Section 18.

In the mean time, the existence of New Mexico's old criminal abortion statutes can pose a problem for proposed legislation on abortion-related issues that may want to redefine terms related to abortion, or establish new criminal actions related to abortion. For example, HB76, which proposes to criminalize certain late-term abortions, also seeks to repeal Section 30-5-3.

PERFORMANCE IMPLICATIONS

HB16 has no performance implications for the district attorneys at this time.

ADMINISTRATIVE IMPLICATIONS

HB16 has no administrative implications for the district attorneys at this time.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB56 addresses parental notification of abortions.

HB75 defines "born alive" and imposes medical care requirements and criminal sanctions.

HB76 prohibits late-term abortions and imposes civil and criminal penalties; it also repeals Section 30-5-3.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico will continue to have an unconstitutional statute criminalizing abortion.

AMENDMENTS

None proposed.