

<b>LFC Requester:</b>	<b>Theresa Rogers</b>
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**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto: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 01/27/16  
**Original**     **Amendment**        **Bill No:** HB 228  
**Correction**     **Substitute**   

**Sponsor:** \_\_\_\_\_ **Agency Code:** 305  
**Short Title:** Revise 2<sup>nd</sup> Degree Murder Penalty    **Person Writing:** Jason Yamato, AAG  
**Title:** \_\_\_\_\_ **Phone:** 505.222.9163    **Email:** jyamato@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**Synopsis:** HB 228 purports to revise the penalty for 2<sup>nd</sup> Degree Murder. The bill proposes two changes to Section 31-18-15, NMSA 1978. The first change is to section A(4) of the statute that deals with a second degree felony resulting in the death of a human being. The change is from the existing penalty of a maximum of fifteen years imprisonment to an increased penalty of eighteen years imprisonment. The second change is to section D and simply redacts “31-18-16.1.” This was the old age enhancement statute that was repealed in 2003.

**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.

**SIGNIFICANT ISSUES**

N/A

**PERFORMANCE IMPLICATIONS**

HB 228 would allow for increased penalties for individuals convicted of second degree murder. This additional three years would have the potential of making a sentence more commensurate with an egregious act.

**ADMINISTRATIVE IMPLICATIONS**

N/A

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

**TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

The drafters may wish to consider that the proposed increase in the maximum term of incarceration does not quite address the concern that the penalty for second degree murder is not reflective of the potential egregiousness of the crime. To illustrate this point, 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. Additionally, 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. If the drafters were to change the maximum penalty for second degree murder to 30 years with no mandatory minimum this would achieve the goal of the potential for adequate punishment for a very serious offense while at the same time giving judges the discretion impose a just sentence.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

## **AMENDMENTS**

N/A