

LFC Requester:	Theresa Rogers
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**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: **Date** January 27, 2016
Original **Amendment** _____
Correction _____ **Substitute** _____
Bill No: HM 22

Sponsor: Rep. Antonio 'Moe' Maestas **Agency Code:** 305
Short Title: Study Three New Levels of Criminal Sentencing **Person Writing** Jason Yamato, AAG
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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)

	FY16	FY17	FY18	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

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: HM 22 seeks to create a legislative interim committee in order to create a dialogue between the courts, prosecutors, public defenders and private criminal defense attorneys in order to add three new degrees of felony offenses. The purpose of adding to the penalty structure would be to ensure that crimes of violence receive harsher sentences than non-violent crimes. The specific proposal of the newly tiered sentencing structure by HM 22 is as follows

- A. Up to 18 years imprisonment for a first degree felony conviction;
- B. 12 years imprisonment for a second degree felony conviction;
- C. Nine years imprisonment for a third degree felony conviction;
- D. Six years imprisonment for a fourth degree felony conviction;
- E. Three years imprisonment for a fifth degree felony conviction;
- F. Eighteen months imprisonment for a sixth degree felony conviction;
- G. One year imprisonment for a seventh degree felony conviction.

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

HM 22 likely would require attorneys from the Office of the Attorney General to participate in the discussion revising the sentencing structure. If the proposal is adopted the new structure could afford prosecutors the possibility of arguing for longer sentences for certain offenses. As proposed, certain offenses may be restricted to a shorter sentence.

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

Defining the terms “violent crimes” and “nonviolent crimes” would be helpful.

OTHER SUBSTANTIVE ISSUES

The stated purpose of HM 22 is to discuss a revised sentencing structure that provides greater protections to the citizens of New Mexico for violent crimes. However, the possible proposal set forth by HM 22 clearly indicates that the sentence for a first degree felony conviction would be “up to” 18 years in the Department of Corrections. The current sentencing structure does not give the courts authority to suspend or defer any part of first degree felony conviction. The end result, absent mitigation or aggravation, would necessarily be a prison sentence of 18 years under the current system. By allowing the courts to suspend or defer a first degree conviction the proposal would potentially provide fewer protections against violent criminals by shortening the potential sentence. Additionally, the proposal is silent on fines and parole terms. The proposal is also silent on whether these penalties will be enhanced if the crime results in the death of a child, the death of a human being, or is a sexual offense.

Practically, the proposal to shift to a system containing seven degrees of felony offenses would essentially require all of the criminal statutes to be re-written. This would be tremendously expensive and time consuming. An alternative to this proposal may be to increase the penalties for each degree of felony. This would allow judges, in the cases of second, third and fourth degree felonies, greater discretion to craft a just sentence for each crime. This would allow judges to ensure that “the most egregious crimes carry the longest sentences.”

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

N/A