

LFC Requester:	Ellen Rabin
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

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 January 24, 2023
Bill No: HB153

Sponsor: Reps. C. Ezzel, C. Brown, J. Mason, A. Martinez, L. Terrazas
Short Title: Livestock Larceny Separate Offenses

Agency Name and Code 305–Office of the Attorney General
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY23	FY24		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY23	FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY23	FY24	FY25	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

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis:

This bill amends the larceny statute, NMSA 1978, § 30-16-1 (2006), to change the unit of prosecution for the offense of larceny of livestock from one count per episode of theft to one count per animal stolen.

Under the larceny statute, the penalty provisions are graduated based on the value of the property stolen. Section 30-16-1(G) provides an exception to the graduated penalty structure when the property that is stolen is livestock. Section 30-16-1(G) provides that “[w]hoever commits larceny when the property of value stolen is livestock is guilty of a third degree penalty regardless of value.” In *State v. Torres*, 2022-NMSC-024, 521 P.3d 77, the New Mexico Supreme Court held that the current language in Section 30-16-1(G) expresses the legislative intent to allow the prosecution to charge offenders per episode of theft and not per animal stolen. Therefore, where an offender steals multiple animals during one episode of theft, the prosecution is limited to one third-degree felony charge.

This bill legislatively overrules *Torres*. Where an offender steals multiple animals in one episode of theft, this bill would allow a separate third-degree felony charge per animal stolen.

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.

N/A

SIGNIFICANT ISSUES

In extreme cases, where an offender steals a large number of animals in one episode of theft, a consecutive sentence under this bill could create an arguable issue of cruel and unusual punishment under the Eighth Amendment. In *Torres*, the New Mexico Supreme Court noted that the defendants faced exposure of 54 years and 75 years for a single episode of theft when charged per animal. 2022-NMSC-024, ¶ 44. The State affirmatively argued in *Torres* that the Eighth Amendment “will limit the potential cruelty” of the most severe sentences when an offender is charged per animal. *Id.* ¶ 47. The Court did not definitively address whether such sentences would constitute cruel and unusual punishment based on the canon of constitutional avoidance and its disposition that the State is limited to one count per episode of theft. *Id.* ¶ 46. But it determined that the “disparity” between the sentence applicable to the highest degree of non-livestock-based larceny where the penalty is premised on value, nine years, and the potential 54 and 75 year sentences in that case if charged per animal “is telling and further confirms that the Legislature did not intend Defendants to receive multiple punishments for the theft of multiple head of cattle in a single episode.” *Id.* ¶ 47. Because the Eight

Amendment forbids sentences that are grossly disproportionate to the crime, *see Solem v. Helm*, 463 U.S. 277 (1983), and because the New Mexico Supreme Court has recognized a “disparity” between the potential sentence in a case charging large numbers of livestock larceny counts from a single episode of theft when charged per animal and the otherwise most severe form of larceny, potential sentences in extreme cases could lead to colorable Eight Amendment issues.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo. Livestock larceny is a third-degree felony offense per episode of theft, irrespective of the number of animals stolen.

AMENDMENTS

N/A