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## FISCAL IMPACT REPORT

SPONSOR Clahchischilliage/ Youngblood ORIGINAL DATE 1/25/17 LAST UPDATED \_\_\_\_\_ HB 159

SHORT TITLE Expand Crime of Voyeurism SB \_\_\_\_\_

ANALYST Sánchez

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate Increase	Indeterminate Increase	Indeterminate Increase	Recurring	General Fund/Other State Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Department of Public Safety (DPS)  
 Attorney General’s Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 159 proposes to add “or attempt to view” to the crime of voyeurism in Section 30-9-20 NMSA 1978 whether using the unaided eye or on an instrument to attempt to view.

### FISCAL IMPLICATIONS

According to the Administrative Office of the Courts (AOC), not only would the courts potentially face an increase in the number of cases, as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury more frequently. More trials and more jury trials will require additional judge time, courtroom staff time, and courtroom availability and jury fees. These costs cannot currently be quantified.

A single change to a criminal statute may have minimal fiscal impact; however, an increase of these cases may require additional resources at the district courts, district attorneys’ offices and

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the public defenders. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts, district attorneys and public defenders are as follow:

- District Attorneys: \$195.4
- District Courts: \$335.6
- PDD: \$202.7

### SIGNIFICANT ISSUES

The AOC states that Section 30-9-20 NMSA 1978 establishes that voyeurism is a misdemeanor offense, unless the victim is less than 18 years of age, in which case it is a fourth degree felony. By including attempted voyeurism in the definition of voyeurism, HB159 would increase the possible penalties for an attempt beyond what the law currently allows. Expanding the elements of voyeurism to include attempt will allow both more cases to be prosecuted and greater penalties to be sought.

The Public Defender Department (PPD) reports that an attempt to commit felony voyeurism (of a child) is already a crime, a misdemeanor under NMSA 1978, Section 30-28-1(D). This bill would criminalize attempted misdemeanor voyeurism (not presently illegal under Attempt) and would raise the degree of attempted felony voyeurism to a felony.

The Administrative Office of the District Attorneys (AODA) states that voyeurism, under the existing law, is a misdemeanor when the victim is an adult, so there is no crime of attempt to commit voyeurism when the victim is an adult. When the victim is under eighteen, voyeurism is a fourth degree felony. The attempt statute applies, and attempted voyeurism of a minor is a misdemeanor. AODA opines that because HB159 expands the crime of voyeurism to include attempted voyeurism when the victim is an adult, it makes the crime of voyeurism easier to prove. It provides an example of a peeping Tom who climbs a tree to look into a second-floor bedroom can be prosecuted even if the defendant doesn't see anything. This expands the scope of the statute, and makes the crime easier to prove. The state does not have to prove beyond a reasonable doubt that the defendant actually saw the intimate areas of another in cases involving an adult victim. If the victim is a minor, the state will still need to distinguish between attempted voyeurism and voyeurism, because attempt will be a misdemeanor and the completed crime will be a fourth degree felony.

According to the Attorney General's Office, HB159 could be in direct conflict with Section 30-28-1 NMSA 1978, which states that no person shall be sentenced for an attempt to commit a misdemeanor. Although HB159 creates an exception, Section 30-28-1 is not amended.

### PERFORMANCE IMPLICATIONS

This bill may have an impact on the following performance measures:

- District Courts:
  - Cases disposed of as a percent of cases filed;
  - Percent change in case filings by case type;
- District Attorneys:
  - Average caseload per attorney;

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- Number of cases prosecuted;
- Number of cases prosecuted per attorney;
- Public Defenders:
  - Percent of cases taken by contract attorneys;
  - Percent of cases that go to trial with clients defended by contract attorneys.

### ADMINISTRATIVE IMPLICATIONS

AODA reports that the jury instructions for voyeurism will need to be revised if this bill becomes law.

### TECHNICAL ISSUES

The AODA states that the wording of the amendment addressing the use of an instrumentality could cause issues of interpretation. It is not clear whether “attempt” is meant to apply only to “view” or is meant to apply also to attempts to photograph, videotape, film, webcast or record.

### ALTERNATIVES

AODA states that if the intent of HB159 is to criminalize an attempt to photograph, videotape, film, webcast or record, it would be clearer to place the “attempt” language prior to all the actions that can be attempted. It suggests changing the language in Section 1, paragraph A, lines 19-24, as follows

“voyeurism consists of ...intentionally using an instrumentality or attempting to use an instrumentality to view, ~~attempt to view~~, photograph, videotape, film, webcast or record the intimate areas of another person..”

ABS/jle/al