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FISCAL IMPACT REPORT

ORIGINAL DATE 1/29/15

SPONSOR Clahchischilliage **LAST UPDATED** _____ **HB** 132aHJC

SHORT TITLE Expand Voyeurism to Include Attempt to View **SB** _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Attorney General’s Office (AGO)
 Administrative Office of the District Attorney (AODA)
 New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to HB 132 would change the original bill adding the word “knowingly” – making it so that if someone is guilty of voyeurism – they would have to knowingly view or attempt to view another person as is currently written in law.

Synopsis of Bill

House Bill 132 amends and modifies the definition of voyeurism proscribed under Section 30-9-20 NMSA 1978 to include attempt. Under the current statute, culpability requires the intentional completion of the act(s) proscribed by the statute. This bill proposes to expand the definition of voyeurism to include the intentional attempt to carry out acts proscribed by this statute.

FISCAL IMPLICATIONS

Fourth degree felonies carry the potential of an eighteen month prison sentence, but the sentencing judge has the discretion to order probation in lieu of incarceration. Misdemeanor offenders normally are not incarcerated in NMCD’s prisons, unless they are convicted of other crimes causing their sentence to total one year or more, and normally misdemeanor offenders are not supervised on probation by NMCD.

The average cost to house an NMCD inmate in 2013 was \$97.62 per day or \$35.6 thousand annually. The cost to house inmates varies depending on custody level and whether the inmate is housed in a private or public facility. The average annual probation and parole cost is \$2,783 for standard supervision, \$2,563 for Intensive Supervision programs, and \$3,664 for community corrections.

NMSC stated that “On June 30, 2014, there were no offenders committed to the custody of the New Mexico Corrections Department (NMCD) who had a conviction for voyeurism as their highest charge”.

AODA stated that “Some additional prosecutions would arise from this, given the increase in penalties for the attempted offenses. However, the larger impact would come from the additional time spent assessing the prosecutorial strength of attempted misdemeanor-level voyeurism cases (where the victim is age eighteen or over).”

SIGNIFICANT ISSUES

AODA provided the following:

Absent statutory language to the contrary, attempts to commit crimes are punished only in felony offenses, an attempt in most cases drops the penalty level down one degree (Escape from Jail being one exception, where attempts are punished at the same level as the completed offense). Thus, an attempt to commit voyeurism against a child under the age of eighteen could be prosecuted, under current law, as a full misdemeanor. However, an attempt to commit voyeurism against a person eighteen or over would not be prosecutable under current law. By the terms of this bill, attempted fourth degree voyeurism would become one of the exceptions that does not drop the degree of the offense, but keeps it at a fourth degree felony. This will cause more disputes in court over the facts of a case, and these disputes may be intense as proof of attempted voyeurism might be difficult.

AOC stated that “Many states’ voyeurism laws include the crime of attempting to view, including the neighboring states of Utah and Arizona; and some litigation has arisen regarding the intent of the offender to view or attempt to view. The attempt to view affects the level of the offense that can be charged depending on the age of the victim.”

EC/je/aml