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FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/18

SPONSOR McQueen **LAST UPDATED** _____ **HB** 32

SHORT TITLE Crimes in Evacuation Zone **SB** _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Indeterminate Increase see Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Attorney General’s Office (NMAG)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 32 proposes to amend Section 30-1-12 NMSA 1978 to include the following crimes in an evacuation zone if the person knows it is an evacuation zone:

- Breaking and entering would be a third degree;
- criminal damage to property; however if the damage is greater than \$1 thousand then the violation would be a third degree felony;
- larceny would be a misdemeanor unless the larceny is between \$259 and \$500 then the violation would be a fourth degree felony, if the larceny is over \$500 but less than \$2.5 thousand the violation would be a third degree felony and if the larceny is over \$2.5 thousand then the violation would be a second degree felony;
- burglary would be a second degree felony;
- entering into any vehicle, watercraft, aircraft or other structure to commit any felony would be a third degree felony;
- aggravated battery would be a first degree felony;

- the unlawful taking of a motor vehicle would be a third degree felony; a second or subsequent instance is a second degree felony.

The bill defines evacuation zone.

The effective date of the provisions in this bill should it become law is July 1, 2018.

FISCAL IMPLICATIONS

The cost to the state for the increased time an individual will have to spend in prison as a result of this bill is \$33.7 thousand per offender. The calculation assumes the earning of available sentence reductions. Since this is a new crime, there is no data to estimate the impact of this bill.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the cost per day to house an inmate in state prison (public and private combined) in FY17 was an average of \$123 per day, or about \$44,779 per year. Increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions pushing the overall prison population higher. NMCD's general fund budget, not including supplemental appropriations, has grown by an average of two percent, and is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendations that NMCD ended FY17 with a \$1 million budget surplus.

The Public Defender Department (PDD) anticipates a need for additional appropriations should bills with higher penalties become law, but it cannot estimate how many, if any cases would be filed under the requirements of this bill. Although it does not annualize the cost, PDD does provide the cost of a mid-level trial attorney between \$92.5 thousand and \$99.7 thousand depending on the area of the state where additional attorneys would be needed. The cost outside of Santa Fe and Albuquerque are at the higher level because it has to provide a salary differential to maintain qualified employees. In addition to the mid-level attorney, PDD would also need to hire support staff, a secretary, investigator and social worker, which would cost on average \$77.1 thousand per attorney. Other annual operating costs per attorney are estimated at \$2.3 thousand. Nonrecurring costs to add a new attorney and support staff is estimated at \$3.1 thousand. The average impact to the general fund annual operating budget to add one attorney is \$175.1 thousand per year.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

SIGNIFICANT ISSUES

According to the New Mexico Sentencing Commission (NMSC), there are a variety of collateral consequences for a felony conviction, so stepping up crimes from misdemeanors to felonies has

significant other effects for defendants.

The New Mexico Attorney General’s Office (NMAG) notes that the definition in this bill does not include evacuation zones designated by federal or tribal officials. The definition also does not indicate which local or state officials have the legal authority to designate an area as an evacuation zone, or what procedures are to be used in doing so. The Emergency Powers Code, NMSA 1978, Section 12-9B-1, which governs emergency management for various types of emergencies, may be helpful in addressing this issue. The lack of a more specific definition of “evacuation zone” may lead to litigation as to whether an evacuation zone was properly designated and whether the defendant committed the alleged offense in an “evacuation zone.”

OTHER SUBSTANTIVE ISSUES

The NMAC states that this bill adds a knowledge requirement for the increased penalties of each of the offenses. Whether the defendant had knowledge of the evacuation zone is likely to be litigated. This litigation may involve whether the authorities gave proper notice of the evacuation zone and whether the defendant received that notice.

The Administrative Office of the Courts (AOC) states that the definition for “evacuation zone” as used within the Criminal Code does not appear that it has been used or defined in relevant Acts, such as the “All Hazard Emergency Management Act”, Section 12-10-1 NMSA 1978 et. Seq., the Disaster Location Act, Section 12-11-19 NMSA 1978 et. Seq., and the “hazardous Materials Emergency Response Act”, nor in relevant chapters of the New Mexico Administrative Code (NMAC). See for example, Title 10, Chapter 20, Part 2, NMAC, *HAZARDOUS MATERIALS EMERGENCY RESPONSE PLAN AND PROCEDURES MANUAL*. The HB 32 definition is limited to areas designated in response to a “natural disaster or industrial disaster.” In not including language relating to a terrorist or other attack or a public health emergency, the reach of the amended statutes increasing penalties for crimes committed within an “evacuation zone” may be unintentionally limited.

PDD asserts that this bill could compel people to follow evacuation orders because their property would be protected from criminal activity.

ABS/sb