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FISCAL IMPACT REPORT

SPONSOR: Aragon DATE TYPED: 02/01/01 HB _____
 SHORT TITLE: Abolish the Death Penalty SB 165
 ANALYST: Rael

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|----------------------|---------------|
| FY01 | FY02 | FY01 | FY02 | | |
| | | See Narrative | | Recurring | GF/OSF |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 239

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender (PD)
 Department of Corrections

SUMMARY

Synopsis of Bill

This bill repeals portions of capital felony sentencing laws to abolish the death penalty. In each relevant section, the provisions providing for death are replaced with provisions allowing for life imprisonment without possibility of release or parole.

Additionally, all aggravating circumstances provisions that would support a punishment of death (or life without release or parole by this bill) are amended to require a “deliberate intent to kill” as opposed to simply an “intent to kill.”

Significant Issues

Death penalty cases are known for being very high cost cases for the state compared to “life” penalty cases. However, agencies are concerned that simply repealing the death penalty without changing the procedures for capital cases in which the defendant faces a life sentence will have only a minimal fiscal impact on the state. The Department of Corrections reports their costs to house an inmate for life, in contrast to the death penalty, is significant.

FISCAL IMPLICATIONS

The Administrative Office of the District Attorneys and the Public Defender report that most agencies should experience no fiscal impact since the same procedures that would ordinarily be followed for a death penalty case will also be required for cases in which the possible sentence would be life imprisonment without the possibility of release or parole.

However, the Administrative Office of the Courts reports that as a practical matter, the cost of a death penalty case for jury fees far exceeds the cost of a non-death penalty case due to the increased time and jurors involved. (\$45.0-\$50.0 versus \$7.0-\$8.0 per case.)

While the costs to the Courts, Public Defenders and District Attorneys may ultimately decrease with the repeal of the death penalty, the cost to the Department of Corrections will certainly be greater. The Department of Corrections estimates that the average life sentence served with a possibility of parole is 32-33 years. The average life sentence without a possibility of parole could reasonably be 50 years. Although New Mexico does not have much experience with death penalty cases, the average death penalty sentence served is 5 years during the appeals process before execution. A rough estimate of the yearly cost to the Department of Corrections per inmate is \$27.0. Considering the additional cost of age or medical related expenses, it is clear that the cost of a life sentence without parole could be more than double the cost of a life sentence with the possibility of parole. The cost of a life sentence without parole could be ten times the cost of imposing the death penalty.

TECHNICAL ISSUES

1. It is not clear whether the amendment in Section 3.A(2) is intended to preclude the consideration of the mitigating circumstances enumerated in NMSA 31-20A-6 which is left in its entirety.
2. NMSA 31-20A-3 and 31-20A-2 appear to conflict with regard to:
 - a) who the sentencing authority is (judge or jury) and
 - b) whether there is discretion to impose a penalty of life *with* the possibility of parole.

OTHER SUBSTANTIVE ISSUES

The Public Defender notes that the cost of housing geriatric inmates at the end of their natural lives is more expensive than releasing them after a minimum sentence of 30 years.

The Department of Corrections is concerned that sentences of life without possibility of parole remove any deterrence against crimes against a corrections officer or another inmate. If an inmate knows they will have no possibility of a greater sentence, they have no incentive to refrain from committing crimes against corrections staff and other inmates.

FAR/sb