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FISCAL IMPACT REPORT

SPONSOR: Komadina DATE TYPED: 2/8/01 HB _____
 SHORT TITLE: Aggravating Circumstances in Capitol Felony SB 410
 ANALYST: Rael

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 438

SOURCES OF INFORMATION

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

SUMMARY

Synopsis of Bill

The Act amends Section 31-20A-5 NMSA relating to aggravated circumstances to be considered by the judge or jury in sentencing someone found guilty of a capital offense. The Act adds two additional provisions to the definition of "aggravated circumstance:"

1. "the victim was a child under the age of thirteen" (the age in the HB 438 is eleven years) or
2. when "the defendant, with the intent to kill, murdered two or more people in a single incident and in a heinous manner."

The amendment also cleans up some other technical language in the statute.

FISCAL IMPLICATIONS

See Administrative Implications.

ADMINISTRATIVE IMPLICATIONS

The AOC reports that capitol murder cases take up a considerable amount of judicial time because the district courts have to conduct not only a trial but a sentencing phase as well. There may be an increase

in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase.

The judicial system will spend \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Public Defender reports that an increase in caseload of 5-10 cases per year, at a cost of \$75,000 to \$100,000 per case (through trial only), would see an increased annual cost of \$375,000 to \$1,000,000.

In those few cases in which the a District Attorneys office is able to seek the death penalty under these two new aggravating circumstances, the individual District Attorney's budget for expert witnesses staff might be affected.

OTHER SUBSTANTIVE ISSUES

The Public Defender notes that the definitions may be drafted too broadly to pass a constitutional challenge. In addition, the department reports the following substantive issues:

1. Victim less than thirteen years of age:

The existing capital murder statute already covers intentional murder during the kidnaping, criminal sexual penetration, or criminal sexual conduct of a child. Therefore, the addition of this circumstance is not necessary to cover abduction-killings of children by strangers. However, if read broadly, this provision could apply to cases in which parents or guardians of children are currently being prosecuted for "child abuse resulting in death". For example, recent highly-publicized cases of "shaken baby syndrome" where unwitting parents or caretakers caused the death of infants by shaking them without knowing the probable consequences of their acts. If read broadly, this circumstance could therefore cover a great number of cases which, although deserving of punishment, are not considered murder of people. If this circumstance is added, it should be applied only to the intentional murder of a child under thirteen years of age.

The second problem with this aggravating circumstance as currently drafted is that it does not require that the defendant knows, or has reason to believe, his conduct is endangering a child. An accidental shooting of a child under thirteen, for example in a hunting accident, or a situation where a person shot another adult in self-defense, but accidentally hit a child, would fall under this statute. Since the probable intent of the bill is to provide further protection to children, it should be limited to those acts which the perpetrator knows (or should know) are endangering children.

2. "Multiple Murders" aggravating circumstance.

The intent of this provision is probably to cover situations where a defendant kills more than one person in a single criminal incident, although this phrase could also be read to apply to a defendant who commits capital murder, having any previous conviction of murder. The new language also adds the confusing, and, probably because of its vagueness, unconstitutional, phrase "in a heinous manner." (all murder is 'heinous'). The existing statute already covers the murder of a person as a witness to a crime, and this has often been applied to situations that would be covered by this circumstance "multiple murder."

This provision suffers from the same constitutional problem as many aggravating circumstances, which is that it does not require a finding of "intentional" first-degree murder. New Mexico has an extraordinarily broad first degree murder statute, which allows this conviction for both "depraved mind" and "felony murder", neither of which requires a finding of the deliberate intent to kill for a conviction of this capital felony. "Depraved mind" murder allows a finding of first-degree murder if a person commits an extremely reckless act, which he knew or should have known would endanger more than one person. It is possible that an extreme example of vehicular homicide, by driving while intoxicated, would become eligible for the death penalty. Such a conviction would probably be found unconstitutional, after lengthy and expensive litigation.

FAR/njw