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FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 03/01/01 HB 328/aHJC
 SHORT TITLE: Amend Criminal Sentencing Act SB _____
 ANALYST: Rael

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			\$ 665.4	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 Public Defender (PD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment would restore the Criminal Sentencing Act to its current state while adding a new section. The new section provides for a sentence enhancement of five years when a gun is used or carried in a “noncapital violent felony” as distinguished from simply a “noncapital felony.” Noncapital violent felonies are second degree murder, voluntary manslaughter, criminal sexual penetration, second and subsequent offenses of robbery and aggravated assault.

Significant Issues with Amendment

While the amendment makes substantial structural changes to the bill, the practical implications are to limit the five-year sentence enhancement to noncapital violence felonies. The fiscal and administrative impact on state agencies will likely be decreased but similar.

Synopsis of Original Bill

The Amend Criminal Sentencing Act amends the penalty for a felon who commits a crime with a firearm from a fourth degree felony to a third degree felony and provides for an increased additional sentence from one year to five years. It also provides that possession in addition to use of the firearm in the commission of a noncapital felony is a violation of the law. The term “felon” is modified to

exclude the requirement that the conviction must have occurred in the previous ten years. The provision regarding second and subsequent violations is deleted.

Significant Issues

The language contained in this bill is similar to laws being passed in other states and recommended by the Department of Justice as part of Project Exile which is aimed at convicted felons who continue to engage in the possession, transportation, or receipt of firearms.

FISCAL IMPLICATIONS

The AODA reports that passage of this bill may result in more cases going to trial. Offenders that face a five year mandatory sentence may be more likely to go to trial. This may result in an increased need for FTE for the AODA, but it will make the state eligible for federal grants.

The Public Defender reports that it would require an additional public defender for each of its nine offices, a public defender appellate attorney and contract attorney costs of \$20.0. The Public Defender estimates a total additional cost of \$665.4.

The AOC reports that any administrative impact will be related to the amount of litigation that is generated or avoided by the law.

OTHER SUBSTANTIVE ISSUES

The Public Defender reports that by changing the definition of “felon”, the law would be a violation of the state and federal constitutional prohibition against passing *ex post fact* (after the fact) law if it is not amended to explain that it cannot be applied retroactively to those convicted of a felony more than ten years before the law was passed.

According to New Mexico and federal courts, the constitutional prohibition on ex post facto laws applies only to penal statutes which disadvantage the offender affected by them. The prohibition against retroactive laws is not absolute. The New Mexico Supreme Court has articulated factors to be considered in determining whether a new rule of criminal law should be applied retroactively: Retrospective or prospective application must be determined on a case by case basis by looking at three issues: the purpose of the new rule, the reliance placed upon the old rule, and the effect upon the administration of justice that retroactive application would have.

FAR/njw:ar