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**FISCAL IMPACT REPORT**



SPONSOR: Carraro DATE TYPED: 01/29/02 HB \_\_\_\_\_  
 SHORT TITLE: Indeterminate Sentencing SB SJM 61  
 ANALYST: Trujillo

**APPROPRIATION**

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
	NFI				

(Parenthesis ( ) Indicate Expenditure Decreases)

**SOURCES OF INFORMATION**

LFC Files

Responses Received

Adult Parole Board (APB) states “This will have no policy nor fiscal impact on this agency”.

**SUMMARY**

Synopsis of Bill

Senate Joint Memorial 61 requests the APB provide testimony to an appropriate interim committee regarding policy reasons for implementing a system of indeterminate sentencing

Significant Issues

The memorial indicates, prior to 1979 New Mexico used a system of indeterminate sentencing, which meant that the judge imposed a sentence with a lower and upper range of years. Under the system of indeterminate sentencing, the APB decided when an offender was released from prison. In New Mexico today, recidivism rates for offenders remain unsatisfactorily high, which arguably reflects a failure to rehabilitate offenders while they are incarcerated for a specific term.

Given those high recidivism rates, it may be advisable to consider a return to indeterminate sentencing and return to the APB's authority to decide release dates for offenders.

The memorial request the APB to provide testimony to an appropriate interim committee regarding policy reasons for implementing a system of indeterminate sentencing.

## **OTHER SUBSTANTIVE ISSUES**

The LFC document provides the following discussion:

**Alternative Sentencing Legislation.** Corrections Department (CD) has some ability to control the population of an individual facility through classification and discipline, which has an impact on good-time deductions. However, the department has no control over admissions and releases and, as a result, no direct control over the total prison population. Judges, constrained by guidelines, impose a determinate, or fixed, sentence on an offender. And, although an offender's prison sentence may end, the APB will only release a parolee with an approved parole plan, leaving some parolees to serve their one- or two-year parole inside. Even the size of good-time awards is limited by state law. Some possible legislative solutions to reduce prison population size (either by reducing admissions or accelerating releases) are discussed below:

- Revising the Sentencing Standards Act could reduce the number of prison admissions significantly if it contains provisions that presume a nonprison sentence for certain nonviolent offenses. The legislation was passed during the 1999 regular session, vetoed by the governor and is now under re-consideration by the legislative Corrections Oversight and Justice Committee (COJC).
- Mandatory sentence enhancements implemented during the past few years have contributed to recent prison population growth. A recent Criminal Juvenile Justice Coordinating Council (CJJCC) analysis indicates a significant number of prisoners are serving time on enhancements and nothing else. (Judges may not suspend or deter enhancements). Under existing enhancements, additional prison time is mandatory for habitual offenders, offenses involving a gun, and crimes against the elderly and disabled. However, district attorneys decide whether to include an enhancement in the list of charges. The vetoed Sentencing Standards Act would have given judges discretion in sentencing for enhancements – a provision that drew support from judges but opposition from prosecutors.
- Mentally ill inmates are less likely to commit new crimes after release if they are identified and treated. The corrections system needs improvements both in the area of screening and treatment. In addition, treatment is believed to be most effective and cost-effective when it occurs in nonprison environments. Some experts argue alternative settings are needed to ensure mental illness is not used as an excuse for incarceration.
- It has been reported on the national level that sexual offender inmates are less likely to commit new crimes after release if they are identified and treated. Again, the corrections system needs improvements in the areas of screening, treatment and after care.

- Drug courts, which have been proven to reduce the number of jail sentences for misdemeanor offenders, appear to reduce the number of prison sentences for felony offenders as well. The impact of drug courts on felony offenders has not been analyzed but expanding the use of drug courts likely would increase offenders placed in prison diversion programs.
  - Several years ago, corrections policy allowed early parole for certain nonviolent offenders within several months of release. Legislators in 2001 approved a pilot project reestablishing the policy. Expanding the pilot project would shorten the length of stay for many prisoners. Some states have the ability to immediately parole certain offenders when the prison population reaches a pre-set cap. The vetoed Sentencing Standards Act would have created a commission with the authority to parole certain offenders when prisons are overcrowded. Such a policy would ensure prisons did not exceed capacity.
1. Indeterminate sentences, repealed in New Mexico more than 20 years ago, call for a range in the time to be served, such as 10 to 15 years. Generally, the bottom of the range is less than that in New Mexico's current determinate sentencing law and returning to indeterminate sentencing could reduce the length of stay for some prisoners. However, it could just as likely increase the length of stay. The indeterminate sentencing law was repealed because of disproportionate sentencing, and the tendency of the citizen parole board to hold prisoners longer than opponents felt was necessary.
  2. At a recent conference and at the August LFC meeting, corrections consultant Dr. Austin indicated a significant number of offenders are in prison for technical probation and parole violations, such as failure to report an employment change. Further, Dr. Austin argues most offenders do not need to be on parole when their sentences terminate and risk-prediction instruments could identify which offenders are most likely to need supervision. (This approach would work in conjunction with Dr. Austin's prison classification scheme already adopted in New Mexico.) He recommends parole only for those who pose a significant risk of reoffending and parole revocation only for new crimes.

It is important to keep in mind the impact of any legislative solution may not be noticeable for several years. An assessment tool would be an important component to any program and funding should include a budget for measurement, analysis and reporting.

Staff suggests including the Criminal Juvenile Justice Coordinating Council as a participant.

LAT/ar