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FISCAL IMPACT REPORT

SPONSOR: Cervantes DATE TYPED: 02/13/03 HB 272

SHORT TITLE: Considerations in Capital Felony Sentencing SB _____

ANALYST: Fox-Young

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|-------------------|----------------------|---------------|
| FY03 | FY04 | FY03 | FY04 | | |
| | | | \$0.1 Significant | Recurring | General Fund |
| | | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 75; Relates to SB 104, SB 51, HB 294, HB 272, SB 272

SOURCES OF INFORMATION

Responses Received From

Administrative Office of the Courts (AOC)
 Corrections Department (CD)
 Administrative Office of the District Attorneys (AODA)

No Response

Attorney General (AG)

SUMMARY

Synopsis of Bill

House Bill 272 amends Section 31-20A-5 NMSA 1978, adding two aggravating circumstances to the list of circumstances that may be considered in a capital felony proceeding. They are as follows.

- the defendant, with the intent to kill, murdered two or more people in a single incident
- the murder was committed with the intent to kill in the commission of an act of terror or an attempt to commit an act of terror.

The bill defines an “act of terror” as an act intended to:

- intimidate or coerce a civilian population;
- influence the policy of a unit of government by intimidation or coercion;
- intimidate or coerce a unit of government into granting illegal economic demands; or
- affect the conduct of a unit of government by an assassination

The bill also makes technical amendments.

FISCAL IMPLICATIONS

Death penalty prosecutions require significant resources of the courts, district attorneys and public defenders. The Administrative Office of the Courts (AOC) notes that district courts conduct a trial as well as a sentencing phase in death penalty cases, requiring a substantial commitment of resources from all of these agencies. The Administrative Office of the District Attorneys (AODA) notes that multiple victim cases are not unusual in New Mexico and that murder in the act of terrorism, while highly unpredictable, are likely to involve jurisdictional complexities. (SEE ALSO TECHNICAL ISSUES)

The additional aggravating circumstances could result in a slight increase in the number of inmates on death row. The Corrections Department (CD) notes that in the long term, the bill could yield a small cost savings for the department if more offenders are executed rather than serving lengthy prison sentences.

CD notes that based on FY02 actual expenditures, the annual contract/private prison cost to incarcerate a male inmate is \$23,552. The annual cost per female inmate at a privately operated facility is \$25,117. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract facility.

TECHNICAL ISSUES

The Administrative Office of the Courts (AOC) notes that the addition of a multiple victim aggravating circumstance may be duplicative of the witness aggravated circumstance.

AODA notes that Subsection B, defining “act of terror,” should be made a subsection to section 9.

Additionally, AOC and AODA note that “act of terror” may be defined too broadly to withstand judicial scrutiny. Does the bill adequately define 'act of terror' to withstand judicial scrutiny?

AODA asks: Does federal law address cases contemplated under subsection 9?

JCF/prr