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FISCAL IMPACT REPORT

SPONSOR: SJC DATE TYPED: 2/26/03 HB _____
 SHORT TITLE: Hate Crime Sentencing SB CS/CS/SB 38 and 249
 ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received on SB 38 and 249

- Administrative Offices of the Courts
- Administrative Offices of the District Attorney
- Office of the Public Defender
- Criminal / Juvenile Justice Coordination Council
- Adult Parole Board
- Department of Corrections
- Development Disabilities Planning Council

This analysis will be amended when comments are provided on the Senate Judiciary Committee Substitute.

SUMMARY

Synopsis of Bill

The Senate Judiciary Committee Substitute adds a new section to the Criminal Sentencing Act with sentencing enhancements for crimes that are committed against a victim or their property based on (motivated by hatred for) the victim’s race, religion, color, national origin, ancestry, gender, or sexual orientation, and gender identity, whether or not the offender’s belief or perception was correct. Crimes so motivated are commonly referred to as a “Hate Crime”.

The bill defines “*gender identity*” as a person’s self-perception, or the perception of that person by another, of the person’s identity as a male or female based upon the person’s appearance, behavior, or physical characteristics that are in accord or opposed to the person’s physical anatomy, chromosomal sex, or sex at birth. The bill defines “*sexual orientation*” as heterosexuality, homosexuality or bisexuality, whether actual or perceived.

The bill sets forth a series of sentence enhancements to be assessed if the underlying crime is a “Hate Crime”.

NON-CAPITAL FELONY

- When a separate finding of fact by the court or jury shows beyond a reasonable doubt that an offender committed a non-capital felony motivated by hate, the basic sentence of imprisonment prescribed for the underlying offense may be increase by one year.
- This “hate crime” increase shall be *in addition to* any increase in the sentence for the underlying crime prescribed for in the criminal sentencing code at Section 31-18-17.
- A sentence imposed pursuant to the “hate crime” sentencing laws *may* include an alternative sentence that requires community service, treatment, education or any combination thereof. Also, the court may suspend or defer any or all of the sentence, or grant a conditional discharge, unless otherwise prohibited from doing so under another statute.
- **SECOND OFFENSE:** If a finding of fact was entered in a previous case that the offender was convicted for committing a crime that was motivated by hate, and if a separate finding of fact by the court or jury shows beyond a reasonable doubt that in the instant case the offender committed a non-capital felony that was likewise motivated by hate, the basic sentence of imprisonment for the underlying offense may be increased by two years.

This “hate crime” increase shall be in addition to any increase in the sentence for the underlying crime prescribed for in the criminal sentencing code at Section 31-18-17.

A sentence imposed pursuant to the “hate crime” sentencing laws may include an alternative sentence, suspension, deferral or conditional discharge.

- **MANNER OF PRESENTATION TO THE JURY:** The bill establishes how the issue of whether or not the underlying crime was motivated by hate is to be presented to the finder of fact. If the case of the underlying charge went before a jury, the issue of whether the offense was also a hate crime shall be presented to the same jury *by special interrogatory*. If the underlying crime is presented to a judge, the issue of whether the offense was also a hate crime shall be presented to the judge.

MISDEMEANOR OR PETTY MISDEMEANOR

- When a misdemeanor or a petty misdemeanor is committed, having been motivated by hate, the basic sentence of imprisonment prescribed for the underlying offense may include an alternative sentence that requires community service, treatment, education or any combination thereof. Also, the court may suspend or defer any or all of the sentence, or grant a conditional discharge, providing such action is not prohibited otherwise in law.

In addition to defining “hate crime” and establishing the breakdown of sentence enhancements,

the bill also establishes required hate crime data collection, requiring every district attorney and every state, county and municipal law enforcement agency to provide the FBI with data concerning the commission of a crime motivated by hate, in accordance with the guidelines of the federal Hate Crime Statistics Act.

Finally, the bill establishes training requirements for the New Mexico Law Enforcement Academy, requiring a course of instruction at least two hours in length concerning the detection, investigation and reporting of crimes motivated by hate. The minimum training requirements shall be incorporated into each certified regional law enforcement training facility's basic law enforcement training and in-service training curriculum.

Significant Issues

If penalties are increased, fewer cases will be resolved through pleading. Therefore, more cases will proceed to trial and will result in longer terms of incarceration. This impacts the public defenders office, the district attorneys office, the courts and the department of corrections, both financially and administratively.

FISCAL IMPLICATIONS

According to the Administrative Office of the District Attorney, the number of hate crimes committed in New Mexico is relatively low. Therefore, it is not anticipated that the increase in costs relating to more cases going to trial will be significant.

It is important to note, however, that longer terms of incarceration for felony hate crimes are costly to the department of corrections.

- The contract/private prison annual costs for incarceration of an inmate based upon FY02 expenditures is \$23,552 per year for males and \$ 25,117 per year for females.
- The cost per client in probation and parole for a standard supervision program is \$1,533 per year, and for clients in intensive supervision programs is \$2,964.

OTHER SUBSTANTIVE ISSUES

The Developmentally Disabled Planning Council recommends the bill be amended to include under its description of targeted groups, persons with disabilities. Research strongly indicates that people with disabilities are the "forgotten victims of hate crimes". Other states' "hate crimes" legislation includes persons with disabilities.

AMENDMENTS

Add "persons with disabilities" in the title and text.

SJM/sb