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## FISCAL IMPACT REPORT

SPONSOR McSorley DATE TYPED 01/31/04 HB \_\_\_\_\_

SHORT TITLE Public Defender Capital Felony Contract Funds SB 275

ANALYST Bransford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$517.0			Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY04	FY05			
	\$517.0		Recurring	New Capitol Felony Representation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates HB 255  
Relates to SB 234

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
Administrative Office of the District Attorneys (AODA)  
Attorney General (AG)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of Bill

House Bill 255 appropriates \$517 thousand from the general fund to the Public Defender Department for the purpose of creating the capital felony representation fund. The bill

authorizes PDD to use money in the fund to contract for representation of defendants in capital felony cases.

### Significant Issues

PDD reports there are a limited number of defense attorneys in New Mexico professionally qualified to represent defendants accused of a capital crime. The department reports having difficulty recruiting contract attorneys on a flat fee basis. In addition, both the New Mexico State Bar and the American Bar Association recommend that attorneys representing capital defendants be compensated on an hourly basis.

The AG reports that while the apparent purpose of the bill is to ensure adequate funding for representation of defendants in death penalty cases, it may go beyond its purpose by proposing to fund “capital felony cases” which can include first degree murder cases in which the death penalty is not sought.

### **FISCAL IMPLICATIONS**

This bill creates the new Capital Felony Representation Fund and appropriates \$517 thousand in general fund to the Fund. This is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

### Continuing Appropriation

This bill creates a new fund and provides for continuing appropriations. The LFC objects to including continuing appropriation language in the statutory provision for newly created funds. Earmarking reduces the ability of the legislature to establish spending priorities.

PDD is responsible for reporting fund balance projections to the legislative finance committee annually.

The AG is concerned the bill may also have indeterminate fiscal implications for the AG and the District Attorneys prosecuting capital felony and death penalty cases at the trial level and the criminal appeals level. Increased funding for representation of defendants in capital felony and death penalty case should also include increased funding for the prosecution to keep the criminal justice system balanced.

### **ADMINISTRATIVE IMPLICATIONS**

PDD reports the administrative impact can be managed with current resources.

### **RELATIONSHIP**

This bill duplicates HB 255 and relates to SB 234 which makes an appropriation of \$695 thousand to the PDD to continue legal representation for the defendants in capital felony cases as a result of the prison riot at the Guadalupe county correctional facility.

**TECHNICAL ISSUES**

The bill does not clarify whether contracts for representation of defendants in capital felony cases would be exclusively funded from the “capital felony representation fund” or whether the public defender could continue to pay for such contracts from the department’s operating budget. In addition, it may be necessary to clarify whether or not the fund could be used to pay for expert witnesses and other costs related to the case.

**VB/lg:dm**