

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

**SPONSOR**   Sanchez, M.        **DATE TYPED**   3/7/05        **HB** \_\_\_\_\_

**SHORT TITLE**   Public Defender Capital Felony Case Fund        **SB**   512/aSJC  

**ANALYST**   Medina  

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	\$759.0			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act

### REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY05	FY06			
	\$ 759.0	Indeterminate	Recurring	Capital Felony Representation Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment changes references of “capital felony” to “death penalty” throughout the bill.

#### Synopsis of Bill

Senate Bill 512 creates the Capital Felony Representation Fund and appropriates \$759.0 from the general fund to the capital felony representation fund for expenditure by the Public Defender

Department so that the chief public defender may contract for representation of defendants in capital felony cases.

### Significant Issues

According to the Public Defender Department, capital murder cases with death penalty aggravators are the most serious and most complex cases to try. Capital murder cases include all first degree murder cases with or without death penalty aggravators. This bill would provide the assistance of counsel as mandated law to persons accused of capital murder. According to the Public Defender Department, while the fund may be sufficient for death penalty cases, it is not sufficient to cover all first degree murder cases. In 2004, the Department handled 115 first degree murder cases in addition to the death penalty cases.

### **PERFORMANCE IMPLICATIONS**

Due to possible conflicts of interest that arise at times, staff attorneys are not always able to take on some capital felony cases with death penalty aggravators. Thus, contract attorneys must handle a number of these cases. This fund

### **FISCAL IMPLICATIONS**

The appropriation of \$759.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance in the capital felony representation fund remaining at the end of fiscal year 2006 and subsequent fiscal years shall not revert to the general fund.

### Continuing Appropriations

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

The LFC FY06 appropriation recommendation is balanced between revenues and expenditures and any increase in recurring funding must be offset by reductions in other areas of the recommendation. The Legislature must consider all priorities and funding requirements to find revenue to support this legislation.

### **ALTERNATIVES**

The Public Defender Department recommends restricting the provisions of the bill to capital murder cases with death penalty aggravators.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

The Public Defender Department will continue to fund contracts with attorneys for capital felony representation from the general fund.

DXM/yr:lg:njw