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FISCAL IMPACT REPORT

ORIGINAL DATE 1/27/07
 LAST UPDATED 3/5/07 HB 190/aSPAC

SPONSOR Chasey

SHORT TITLE Abolishing the Death Penalty SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Corrections Department (CD)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SPAC Amendment

Senate Public Affairs Committee amendment inserts a new section 31-20A-5 NMSA 1978, which limits the aggravating circumstances to be considered by the sentencing court or jury, adding the word deliberate to the intent to kill. Thus, the defendant must have committed the murder with the deliberate intent to kill.

Synopsis of Original Bill

House Bill 190 abolishes the death penalty and in NMSA 1978, § 31-18-14, substitutes the sentence of death with that of either life or life without the possibility of parole. The bill also amends the Capital Felony Sentencing Act, NMSA 1978, § 31-20A-1, *et seq.*, removing the subsection concerning the jury's determination of a life or death sentence.

FISCAL IMPLICATIONS

According to the Public Defender Department, abolishing the death penalty would save New Mexico millions of dollars. The State Bar Task Force on the Administration of the Death

Penalty in New Mexico Final Report,¹ completed in 2004, outlines exactly why death penalty cases are so costly: These cases require heightened standards for defense counsel and at least two highly qualified defense attorneys at each stage of proceedings.² They require extensive trial level litigation as well as constitutionally and statutorily mandated appeal.³ Unlike any other criminal trial, these cases demand that a certified court reporter transcribe all proceedings.⁴ The survivors of the victim should be accorded particular respect.⁵ Jury selection is a long, arduous process that potentially touches on the constitutional and religious rights of New Mexicans, and costs at least four times as much as a non-death first-degree murder case.⁶ Due to changes in federal habeas corpus law, these cases must be long and thoroughly litigated in state court habeas proceedings as well.⁷ The Task Force ultimately recognized and recommended substantial changes to the way death penalty cases are prosecuted and defended in New Mexico, which may further increase costs.

Although a study has ever been done in New Mexico on the total costs of a death penalty case to the state (including the prosecution, the public defender, and the extensive drain on court resources.), a recent Duke University study done on North Carolina's costs found that the death penalty costs North Carolina \$2.16 million dollars per execution over a system that imposes life imprisonment.⁸

New Mexico does not receive much return on its death penalty investment. Fewer than half of the cases in which the prosecutor seeks the death penalty end in a death sentence. And, according to the National Bureau of Justice Statistics, 68% of all these convictions are overturned on appeal—the highest overturn rate in the United States.⁹ Therefore, fewer than one-fourth of all death penalty prosecutions ultimately result in a defendant going to death row in New Mexico. Finally, New Mexico's actual execution rate is even lower than the 12% of all convicted and sentenced murderers ultimately executed, nationally.¹⁰ Taking this data to its logical conclusion, there is only a 4.5% chance that any multi-million dollar death penalty prosecution will ever end in an execution in New Mexico.

According to the Administrative Office of the Courts, Moreover, to assemble a jury for a death penalty case, the district court will summon as many as one thousand (1,000) people. An estimate of what a death penalty case cost for the jury and witness fee fund is approximately

¹ State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report, submitted to the Board of Bar Commissioners January 23, 2004 (The Honorable Rudy S. Apodaca and Jerry Todd Wertheim, co-chairs), *available online at* http://www.nmbar.org/Content/NavigationMenu/Publications_Media/Reports_Surveys/Report_on_the_Death_Penalty/TskfrcDthPnltyRprt.pdf.

² *Id.* at 7-10. See also American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (February 2003).

³ *Id.* at 12-21.

⁴ *Id.* at 22.

⁵ *Id.*

⁶ State Bar of New Mexico Task Force to Study the Administration of the Death Penalty in New Mexico Final Report at 23; Telephone conversation with court administrator Fern Goodman, 2/1/05. Fern estimated that the costs to be \$20-25,000 for a death jury and \$7-8,000 for a non-death jury. This is her conservative estimate, and it does not include the costs of a change of venue or the cost of bringing witnesses or experts concerning juror exposure and venue.

⁷ *Id.* at 24.

⁸ P. Cook, "The Costs of Processing Murder Cases in North Carolina," Duke University, May 1993.

⁹ U.S. Dept. of Justice, Bureau of Justice Statistics, "Capital Punishment 2003," appendix Table 4, 2004.

¹⁰ U.S. Dept. of Justice, Bureau of Justice Statistics, "Capital Punishment 2003," appendix Table 4, 2004.

\$20,000-\$25,000. In contrast, a non-death penalty murder case cost approximately \$7,000-\$8,000.

SIGNIFICANT ISSUES

According to the Correction Department the bill could result in a moderate placement burden on the Department. Because the Department currently operates all of its facilities at or near capacity, it would be difficult to continually absorb new offenders who have been sentenced to life without the possibility of release or parole. If large numbers of offenders are convicted and sentenced under the provisions of the bill, it may become necessary for the state to build new facilities or enlarge those already in existence.

PERFORMANCE IMPLICATIONS

The Public Defender Department reports that this bill would greatly streamline the litigation and appeal of what are now death penalty cases, because it will eliminate the death penalty specific pre-trial appeals, the greatly expanded jury selection, and the bifurcated trial procedures (a guilt phase and a penalty phase trial) that are now required under the Capital Felony Sentencing Act to comply with the United States Constitution Eighth Amendment's prohibition against cruel and unusual punishment. Abolishment of the death penalty would also negate the Capital Felony Sentencing Act's detailed appellate review in the New Mexico Supreme Court.

EO/mt