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FISCAL IMPACT REPORT

ORIGINAL DATE 1/25/07
 SPONSOR Cervantes LAST UPDATED 3/11/07 HB 296/aHJC/aHAFC
 SHORT TITLE Criminal Penalty Legislation Requirements SB _____
 ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NA	\$70.0	\$70.0	\$140.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Sentencing Commission (NMSC)
 New Mexico Corrections Department (NMCD)
 Department of Finance Administration (DFA)

No Responses Received From

Governor's Office
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)

SUMMARY

Synopsis of HAFC Amendment

The House Appropriations and Finance Committee amendment of House Bill 296 removes all language pertaining to an appropriation.

Synopsis of HJC Amendment

The House Judiciary Committee amendment of House Bill 296 inserts language to clarify that the requirements of the proposed legislation not only apply to laws that increase criminal penalties, but also to laws that decrease criminal penalties and that the fiscal impact statements to be prepared by the New Mexico Sentencing Commission not only apply to new crimes, but to situations where existing crimes are repealed, prison sentences decreased or mandatory minimum prison terms removed.

Synopsis of Original Bill

House Bill 296 appropriates \$70.0 from the general fund to the New Mexico Sentencing Commission to pay salaries and benefits to staff for the preparation of fiscal impact states as required by the proposed legislation. The bill also creates the Criminal Justice Special Fund in the state treasury. The fund is to consist of appropriations, gifts, grants, donations and bequests made to the fund. Income from the fund shall be credited to the fund, and money in the fund will not revert to the general fund. Money in the Criminal Justice Special Fund will be subject to appropriation by the legislature for criminal justice purposes, including operational costs of the corrections department, courts, district attorneys and the public defender department.

House Bill 296 requires the New Mexico Sentencing Commission to prepare fiscal impact statements for legislative bills which:

- Create new crimes punishable by imprisonment,
- Increase the period of imprisonment authorized for an existing crime,
- Imposes mandatory minimum terms of imprisonment, and
- Modify the law governing the release of prisoners in such a way that the time served in prison will be increased.

The fiscal impact statements are to reflect the following: increase estimates of annual operating costs for the New Mexico Corrections Department attributable to the bill if it becomes law, increase estimates of the annual operating costs of the bill over the next six years and report the dollar impact associated with the most expensive year, and details concerning any increase or decrease in inmate population. The proposed legislation requires that an appropriation must be made from the general fund for any law that a fiscal impact statement was prepared and would increase prison time. The New Mexico Sentencing Commission will complete fiscal impact statements by January 15th for proposed legislation submitted no later than December 1st of the prior year.

FISCAL IMPLICATIONS

The appropriation of \$70.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2008 shall revert to the general fund.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for newly created funds, as earmarking reduces the ability of the legislature to establish spending priorities. The proposed legislation does not make an appropriation to this new fund.

NMCD states the proposed legislation would be enormously beneficial to the department. The proposed legislation would require that NMCD be given sufficient funding for any new crime bill enacted by the Legislatures.

SIGNIFICANT ISSUES

NMSC states the Legislative session is relatively short with hundreds of bills to consider and fiscal analysis of bills places a premium on speed. The NMSC states they are well placed to prepare impact statements due to the membership of the commission, its association with university research scientists and access to data.

AOC states the proposed legislation closely models on the Commonwealth of Virginia’s statute Section 30-19.1:4, with the exception that monies in Virginia’s Corrections Special Reserve Fund are limited to expenditures on “capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.”

PDD reports the proposed legislation would greatly assist the Public Defender Department in estimating any increase in annual operating costs as any bill increasing terms of imprisonment is likely to correlate into an increased number of clients proceeding to trial or appealing their convictions.

DFA expresses concern that an automatic appropriation to the Criminal Justice Special Fund “takes authority over the appropriation process away from the direct control of the legislature and bases it on estimates and assumptions of the New Mexico Sentencing Commission.” DFA notes the New Mexico Sentencing Commission is made up of University of New Mexico employees and not direct employees of the State of New Mexico.

PERFORMANCE IMPLICATIONS

NMCD states the proposed legislation would help the department better perform its services related to prison operation.

ADMINISTRATIVE IMPLICATIONS

The proposed legislation requires NMCD to provide the average operating costs per inmate and the number of inmates in the adult correctional facilities. NMCD reports they already maintain these statistics.

OTHER SUBSTANTIVE ISSUES

NMCD states if the proposed legislation is enacted, the Legislature will have to look at the general fund in determining how it is going to pay for the appropriations required whenever a crime bill becomes law.

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