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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/07

SPONSOR Komadina LAST UPDATED _____ HB _____

SHORT TITLE Life Imprisonment Without Parole SB 47

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB 190. Relates to HB 520

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Corrections Department (CD)
 Administrative Office of the Courts (AOC)
 Public defender Department (PDD)
 New Mexico Sentencing Commission (SC)
 Attorney General's Office (AGO)
 Administrative Office of the District Attorney (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 47 seeks to amend sections of the Criminal Sentencing Act to enhance the penalty for a capital felony conviction, where a life sentence is imposed, to life imprisonment "without possibility of release or parole."

The language would be amended to clarify that a third conviction for a violent felony shall be punished by life imprisonment, replacing the reference to a third violent felony conviction "when that sentence does not result in death." A violent felony would mean murder in the second degree, rather than in the first degree and kidnapping resulting in physical injury or a sexual offense, rather than great bodily harm inflicted.

The sentencing procedure would be amended to include the language indicating that for a capital felony conviction, life imprisonment is imposed without possibility of release or parole. The bill also seeks to impose a life sentence without the possibility of release or parole on a convicted, mentally-retarded defendant, precluding a penalty of death.

The bill enhances the penalty when a jury does not unanimously specify a sentence of death or does not make the required finding or the jury is unable to reach a unanimous verdict, from life imprisonment to life imprisonment without possibility of release or parole.

The language in the Aggravating Circumstances section, is amended to include “when there is a deliberate intent to kill on the part of the defendant” in the list of aggravating circumstances to be considered in a capital felony case. The bill also expands the aggravating circumstances list to include the following: when the defendant, with the deliberate intent to kill, has murdered a child less than thirteen years of age; murdered a person because of that person’s present or former status as a peace officer or employee of the corrections department; murdered two or more people in a single incident; or committed a murder in a heinous manner.

The bill seeks to amend the statutory section controlling parole authority and procedure, by eliminating language allowing the parole board’s discretion in granting parole to an inmate convicted of a capital felony. The proposed language states that an inmate convicted of a capital felony and sentenced to life imprisonment must serve the life sentence without the possibility of release or parole.

Finally, the bill seeks to repeal Section 31-18-14.1 NMSA 1978. The bill would be applicable only to individuals convicted of a capital felony offense committed on or after July 1, 2007--the same time of the bill’s enactment into law.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law at the time of sentencing. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Public Defender Department (PDD) states that legislation resulting in increased sentences always creates the possibility that more criminal defendants will proceed to trial instead of accepting a plea offer. This will result in an increased caseload and additional court time for Public Defender Department attorneys. Because of the severity of the sentence, more, and probably all, sentences resulting in the imposition of life without the possibility of parole will be appealed, possibly resulting in additional appellate caseload.

The Corrections Department (CD) believes that the bill will have little or no fiscal impact upon the department in the short term. However, in the long term, the bill could result in a minor to moderate increase in costs to the department as a result of the increased frequency and degree of misconduct committed by inmates who have no hope for parole. In the long term, the department will experience increased costs in medical treatment for inmates sentenced to life without the possibility of parole as they age and medical issues related to the elderly rise. Also, in approximately thirty (30) years or more, the bill could result in substantial increases in

costs to the department as a result of the need to house these offenders who might otherwise have been released on parole.

The bill will result in a minimal decrease in revenues beginning in approximately thirty (30) years or more when these capital offenders who might otherwise have been placed on parole and be required to pay parole supervision fees will now be required to remain in prison.

The contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males. The cost per client to house a female inmate at a privately operated facility is \$21,651 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in probation and parole for a standard supervision program is \$1,467 per year. The cost per client in intensive supervision programs is \$3,383 per year. The cost per client in department-operated community corrections programs is \$3,503 per year. The cost per client in privately-operated community corrections programs is \$7,917 per year. The cost per client per year for male and female residential community corrections programs is \$39,401.

SIGNIFICANT ISSUES

The CD notes the following three significant issues:

The bill raises three (3) issues of significance to the Corrections Department. First, inmates who are sentenced to prison for the entirety of their lives (with no possibility of parole) are much more likely to be a management problem; since most of them may tend to believe they don't have anything to look forward to. Since they will never be able to earn their release, there is no incentive for them to comply with prison rules or regulations. They are also often more likely to try to cause disturbances or engage in often frivolous litigation over every perceived slight or discomfort.

Second, the new aggravating circumstance, which includes the killing of a person because of that person's present or former status as an employee of the Corrections Department, could result in a slight improvement in the morale of Corrections Department employees.

Third, beginning in approximately thirty (30) years or more, the bill will result in minimal to substantial cost increases to the department as a result of the need to continue incarcerating those capital offenders who may otherwise have been released on parole. Further, as prisoners age, their medical care costs tend to increase. Inmates spending in excess of 30 years in Department prisons are very likely going to require expensive treatments and care.

The Attorney General's Office (AGO) notes that the bill will create a lower threshold of harm under which a kidnapping becomes a violent felony, conviction of three of which will result in a life sentence. Under current law a kidnapping becomes a violent felony if it results in "great bodily harm" which is defined as an injury which creates a high probability of death or serious disfigurement or permanent loss or impairment of any member or organ of the body. The proposed law would define a violent felony kidnapping as one resulting in "physical injury or a sexual offense", a broader definition, which tracks the language currently defining kidnapping in the first degree.

SB 47 adds four aggravating circumstances to the current list of seven, which will support the death penalty:

1. murder of a child under 13;
2. murder of a former peace officer or corrections department employee;
3. murder of two or more people in one incident;
4. murder in a heinous manner

ADMINISTRATIVE IMPLICATIONS

According to the CD, In both the short term and the long term, the bill could result in a minimal increase in the administrative burden upon Department prison personnel who may be required to address problems associated with a small, but more difficult to manage group of inmates because of their inability to earn release upon parole.

Also, in approximately thirty (30) years or more, the bill will begin to result in a slight to moderate increase in prison population when these capital offenders who might otherwise qualify for release on parole will be required to remain in prison for the rest of their natural lives.

CONFLICT

Conflicts with HB 190, Relates to HB 520

TECHNICAL ISSUES

The PDD believes that the addition of a Subsection K to NMSA 1978, Section 31-20A-1, the Capital Felony Sentencing Act, is problematic. This subsection provides for the possible imposition of the penalty of death when a murder is committed in a “heinous” manner. “Heinous” is not otherwise defined and this lack of specificity may result in an increase in the notice to seek the death penalty in murder cases previously not eligible for the death penalty. This section may ultimately be overruled as “void for vagueness.” The AGO adds that the courts would be required to give the term meaning on a case by case basis.

In addition, the AGO notes that the bill redefines the intent to kill in all aggravating circumstances to include the word “deliberate”, which will have the effect of excluding first degree felony murder as a death eligible offense.

BS/mt