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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/08

SPONSOR Fox-Young LAST UPDATED \_\_\_\_\_ HB 254

SHORT TITLE Additional Violent Felonies for Sentencing SB \_\_\_\_\_

ANALYST Peery-Galon

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY08	FY09	FY10	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

#### No Responses Received From

New Mexico Sentencing Commission  
 New Mexico Corrections Department  
 Department of Public Safety

### SUMMARY

#### Synopsis of Bill

House Bill 254 amends Section 31-18-23 NMSA 1978 to expand the list of violent felonies in the Criminal Sentencing Act that will trigger a mandatory sentence of life imprisonment to include:

- Voluntary manslaughter,
- Third degree aggravated battery,
- Third degree aggravated battery against a household member,
- Second or third degree shooting at a dwelling or occupied building,
- Second or third degree shooting at or from a motor vehicle,
- First degree kidnapping,
- First or second degree criminal sexual penetration,
- Second or third degree criminal sexual contact of a minor,

- First or second degree robbery,
- Second degree aggravated arson,
- Third degree aggravated batter upon a peace officer,
- Assault with intent to commit a violent felony upon a peace officer, and
- Aggravated assault upon a peace officer.

A person convicted of three violent felonies, where at least the third conviction is in New Mexico, is subject to a mandatory sentence of life imprisonment. Under the proposed legislation, in a proceeding to enhance a defendant's sentence, each violent felony must have been committed after the defendant's conviction for the preceding violent felony.

### **FISCAL IMPLICATIONS**

AOC states 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 and appeals from convictions.

PDD states the proposed legislation may significantly increase prison populations and notes this was the result of California's three-strikes law. Based on FY06 actual expenditures, the average annual cost to incarcerate an individual in a NMCD correctional facility is \$31,239, and the average annual cost of probation and parole/community corrections client is \$1,343.

AODA states the proposed legislation does not specifically include appropriations, however the fiscal implications for trying the cases that will be generated will likely be significant. The proposed legislation will likely create a situation where defendants will choose to take their third case to trial rather than plead due to a mandatory life sentence. If this occurs the impact on prosecution and the judiciary may be affected in terms of scheduling the increased number of trials.

### **SIGNIFICANT ISSUES**

AOC notes the proposed legislation adds nine offenses to the list of violent felonies and amends four others that will trigger New Mexico's three-strikes rule. AOC notes as penalties increase, potential life imprisonment tends to inspire defendants to retain attorneys and demand jury trials. Indigent offenders are entitled to public defender services.

AODA state the proposed legislation would allow the State of New Mexico to criminally punish those individuals who continue to commit violent offenses. It also specifies that there must be three violent felony convictions, separate and distinct from each other, and only certain enumerated violent offenses would apply.

### **PERFORMANCE IMPLICATIONS**

AOC states the proposed legislation may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed and percent change in case filings by case type.

**ADMINISTRATIVE IMPLICATIONS**

AOC notes 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. Life imprisonment cases take up a considerable amount of judicial time. AOC states the proposed legislation may increase the work that needs to be done by the courts and require additional resources to handle the increased workload.

**OTHER SUBSTANTIVE ISSUES**

AODA states although the amendment does not indicate notice to be sent to defendant, it would be prudent for the state to add an initial notice pleading whenever this sentencing option is pursued.

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