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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/11

SPONSOR Eichenberg LAST UPDATED _____ HB _____

SHORT TITLE Capital Felony Case Aggravating Circumstances SB 453

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		See Below	See Below		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Corrections Department (CD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 453 adds three aggravating circumstances to be considered when sentencing offenders for capital felony convictions. Currently in New Mexico, the only capital felony is murder in the first degree. Murder in the first degree consists of the killing of a person by another person without lawful justification or excuse, by any means with which death may be caused, (1) by any kind of willful, premeditated killing; (2) in the commission of or attempt of any felony; or (3) by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life.

The additional aggravating circumstances added by this bill are the defendant, with deliberate intent to kill, murdered a child less than 13 year old; the defendant, with deliberate intent to kill, murdered two or more people in a single incident; and the defendant, with deliberate intent to kill, committed a murder in an especially heinous, atrocious or cruel manner. If a jury finds one or more aggravating circumstances exist, the defendant must be sentenced to life imprisonment without the possibility of parole or release. If the jury makes no findings of aggravating circumstances, then the defendant must be sentenced to only life imprisonment which means that the defendant is eligible for parole at the discretion of the parole board after having served a full 30 year sentence in prison.

FISCAL IMPLICATIONS

PDD notes the “especially heinous, atrocious or cruel aggravating circumstance” is so broad as to apply to any murder, and so vague as to be disputable in any murder. It can, and if the bill is enacted, probably will be litigated in every murder case that goes to trial. How much that litigation will cost the Public Defender Department and other agencies will depend on how the issue plays out in the trial courts, and whether New Mexico enacts a death penalty.

By expanding the aggravating circumstances, the bill may lead to minimal or moderate increases in the number of offenders being sentenced to life imprisonment with no possibility of release or parole as opposed to a life imprisonment sentence where the offender, due to no findings of aggravating circumstances is eligible for parole after serving a full 30 years in prison. The few additional actual life sentences with no possibility of parole or release resulting from this bill will increase the CD’s costs by causing these offenders to spend their entire or whole remaining lives in prison instead of just 30 years. The bill seems unlikely to lead to a substantial number of new actual life sentences because the vast majority of CD inmates are not in prison on capital felony convictions. However, it is always difficult to accurately predict or estimate the ultimate effect of any crime bill increasing the scope of who serves an actual life sentence.

CD notes there is no appropriation in the bill to the CD to cover any of the CD’s increased costs associated with the creation of this expanded number of offenders serving actual life sentences. These additional costs will not be felt by or imposed upon CD until well in the future-- 30 years from conviction.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned or operated prison to \$31,239 per year in a contract or private prison where primarily only level III or medium custody inmates are housed. The cost to house a female inmate at a privately owned or operated facility is \$33,258 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract or private facility.

The impacts of this bill could be substantial in the future, but there will be minimal cost in fiscal year 2012 and slightly more in fiscal year 2013.

SIGNIFICANT ISSUES

If numerous new crime or sentence enhancement bills such as this one are passed, CD will eventually reach its rated capacity for its prison population. At that point, the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All of these options have negative consequences. Early release of prisoners jeopardizes public safety, and housing prisoners out of state or building new prisons is expensive.

As prisoners age, they are likely to need more and more health care. Prisoners spending the rest of their natural lives in prison with no possibility of parole or release are the most likely to need expensive, life sustaining medical care in their later years. Inmate medical care is included in

CD's current yearly incarceration costs delineated in the preceding paragraph. The cost of inmate medical care is likely to continue increasing over the years, and is likely to be much more expensive 35-40 years from now than it is now.

While the bill is not likely to substantially increase the inmate population, inmates serving actual life sentences with no possibility of parole or release) are the most likely to cause prison disruptions and to threaten the safety and security of staff and other inmates. These inmates often have no incentive to behave or do well in prison because they know they will never leave prison. These inmates often become the most administratively time-consuming and expensive inmates, even though there are not large numbers of them in any CD prison. These inmates also often file numerous meritless civil lawsuits, further straining state and CD resources.

PDD provided the following:

As the law now stands, the existence of aggravating circumstances is the difference between a life sentence and a life-sentence-without-the-possibility-of parole. As far as PDD resources is concerned, the number of attorneys assigned to any individual case is not likely to increase significantly with the addition of aggravating circumstances. Trials will be longer, however, and consume more resources, with the addition of aggravating circumstances.

Making the assessment more difficult is the wild-card nature of the "heinous, atrocious or cruel" aggravating circumstance. Since it is impossible to prove --or disprove-- the existence of the factor, every first-degree murder case will likely be tried as a potential life-without-parole case, and require a trial on the existence of "specialness," "heinousness," "atrociousness," and "cruelness." What this trial will entail will turn on what the lawyers can invent, and what judges will permit. How much this will cost the PDD is difficult to predict.

Of course, the status quo in New Mexico is that there is no death penalty. Should that change, and the "especially heinous, atrocious or cruel" standard be retained as an aggravating circumstance in a capital-sentencing regime with a death penalty, the requirements of death-penalty jurisprudence will require a doubling in the number of attorneys assigned to particular cases, and an increase in staff to include many more attorneys with the qualifications to represent death-row clients. Because the "heinous, atrocious or cruel" circumstance is capacious enough to include virtually any murder, the potential drain on PDD resources could be huge.

DW/svb