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## FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/13/01 HB 463/HJCS  
 SHORT TITLE: Factors for Parole of Sex Offenders SB \_\_\_\_\_  
 ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
				Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files  
 Corrections Department (CD)  
 Parole Board - **Did not respond to request for analysis**

### SUMMARY

#### Synopsis of Bill

The purpose of HB463/HJCS is to provide the Adult Parole Board (APB) with the authority to require that convicted sex offenders serve a period of parole as deemed necessary by APB, up to a period of the entirety of the sex offender’s natural life; and to require special conditions of parole. Specifically, the bill provides that prior to release on parole of a sex offender, APB is to conduct a hearing to determine the period of parole and the conditions of parole. The bill sets out several factors that APB should consider in making its determination.

HB463/HJCS authorizes APB to order reasonable conditions of parole, including:

- (a) being subject to intensive supervision by a parole officer;
- (b) participating in out-patient or in-patient sex offender treatment program;
- (c) agreement not to use alcohol or drugs;
- (d) agreement not to have contact with certain persons or classes of persons; and
- (e) being subject to alcohol testing, drug testing, polygraph exams, voice stress analysis or similar examination to determine compliance with the conditions of parole.

APB may order the sex offender to serve any period of parole deemed necessary, up to and including the entirety of the sex offender’s natural life. The bill provides that APB review the terms and conditions of

a sex offender's parole every two (2) years. If the sex offender demonstrates and APB finds that is no longer necessary to continue the offender on parole or that certain conditions are no longer necessary, APB may amend its order accordingly.

If APB finds a sex offender violated the conditions of parole, APB may revoke parole and return the offender to prison, extend the period of parole or order new conditions. Also, in anticipation of a parole hearing, the chief public defender will be notified to determine if the sex offender requires the assistance of counsel at the hearing.

HB463/HJCS defines the term "sex offender" as a person who is convicted of, pleads guilty to or pleads *nolo contendere* to any of the following offenses:

- (a) criminal sexual penetration in the first, second or third degree;
- (b) criminal sexual contact of a minor;
- (c) sexual exploitation of children as defined in subsection B, C, or D of section 30-6A-3 NMSA 1978;

The effective date of the legislation is July 1, 2001.

### Significant Issues

According to CD, research has demonstrated that most sex offenders, unlike other criminal offenders, are likely to continue committing sex offenses throughout their entire lives. While most persons who commit other types of violent crime tend to stop engaging in such behavior as they get older, many sex offenders continue such behavior over their lifetime. Furthermore, research has shown that many sex offenders not only tend to be recidivists, but can commit dozens of sex offenses each year and hundreds throughout their lifetime and are often not caught. Also, they often target children as their victims. This type of recidivism results in the need to give APB the discretion to determine how long the period of parole should be in each individual case.

CD reports research has also demonstrated that the recidivism rate for sex offenders can be successfully reduced by a program of intensive supervision in conjunction with special conditions of parole and polygraph testing and other similar testing to determine whether the sex offender is complying with the conditions of parole. The State of Colorado uses such a program and has experienced great success in reducing recidivism and/or re-offending by sex offenders.

### **PERFORMANCE IMPLICATIONS**

According to CD, HB463/HJCS will have a positive impact upon CD's prison program by reducing recidivism by sex offenders. It will also improve the performance of CD's parole supervision program by providing public officers with the effective means to properly supervise these offenders.

### **FISCAL IMPLICATIONS**

According to CD, HB463/HJCS could reduce costs to CD (as well as other law enforcement agencies and the courts) in later years if it results in a reduction in recidivism rates for sex offenders, thereby reducing prison population. At the same time, the bill will result in an increase in costs to CD in later years as a result of the larger parole caseloads due to the longer periods of parole. Since the cost of incarceration is much greater than the cost of supervision on parole, it is possible that on balance, the bill could reduce the overall cost to CD in later years.

The private prison annual cost of incarcerating an inmate based upon Fiscal Year 00 actual expenditures

## House Bill 463/aHJCS -- Page 3

is \$21,670 per year for males. The cost per client to house a female inmate at the privately operated facility in Grants is \$24,348 per year. Any net increase in inmate population will be housed at a private facility.

The cost per client in probation and parole for a standard supervision program is \$1,536 per year. The cost per client in Intensive Supervision programs is \$3,922 per year. The cost per client in CD's department-operated community corrections programs is \$5,519 per year. The cost per client in privately-operated community corrections programs is \$10,724 per year.

CD reports there will also be a minimal increase in revenue in later years from the additional parole supervision fees collected over the longer parole terms.

### ADMINISTRATIVE IMPLICATIONS

According to CD, the bill will reduce the administrative burden on prison personnel in later years of recidivism rates for sex offenders are reduced. It will increase the administrative burden on parole officers and support personnel in later years due to the longer parole terms and resulting higher caseloads.

### TECHNICAL ISSUES

According to the AG, the committee substitute still does not address the sentencing court's power to set a parole period found at NMSA 1978, § 31-18-15 (C) (1999). As a general rule, "time under a deferred or suspended sentence, or time on parole, is counted in determining whether a sentence has been served." *State v. Lard*, 86 N.M. 71, 519 P.2d 307(1974). The sentencing court's authority in this regard is limited. *State v. Freeman*, 95 N.M. 127, 619 P.2d 572 (1980). It remains uncertain that the power to set an indeterminate parole can be granted to the board without specifically providing that an indeterminate period of parole is a possible punishment for specific offenses.

### SUBSTANTIVE ISSUES

The AG reports the committee substitute now excludes sex offenders from the application of the general parole provisions found at NMSA 1978, § 31-21-10 (C) (1997).

The period of parole for a sex offender is set at "the entirety of the sex offender's natural life;" unless "the board orders otherwise." The lifetime parole period found in the original bill is no longer mandatory under these provisions.

The committee substitute would permit the adult parole board to consider numerous factors and place extensive conditions on the parole of a sex offender. The committee substitute strikes the requirement that the board consider past "sexually deviant behavior" found in the original bill.

The committee substitute creates the right to counsel and provides that the public defender will determine if the inmate needs counsel at his parole hearing.

These provisions would apply only to those convicted of first-, second- or third-degree criminal sexual penetration (rape), third-degree criminal sexual contact with a minor (child molestation), or sexual exploitation of children (pornography).

New provisions in the committee substitute also exempt inmates otherwise eligible under the geriatric parole program.

LAT/njw