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FISCAL IMPACT REPORT

SPONSOR: Youngberg DATE TYPED: 02/28/03 HB 293

SHORT TITLE: Change Definition of "Violent Felony" SB _____

ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Significant	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

- Department of Public Safety (DPS)
- Administrative Office of the Courts (AOC)
- Attorney General (AG)
- Administrative Office of the District Attorneys (AODA)
- Corrections Department (CD)

No Response

- Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 293 moves the definition of "great bodily harm" from Section 31-18-23 to Section 31-18-15.2. "Great bodily harm" means an injury to a person that creates a high probability of death or that causes serious disfigurement or that results in permanent loss or impairment of the function of any member or organ of the body.

The bill amends Section 31-18-23, the section that establishes a mandatory life sentence for a third violent felony conviction. Currently, the statute defines "violent felony" by listing the criminal offenses that qualify as violent felonies. These are:

- First and second degree murder;

- Shooting at or from a motor vehicle resulting in great bodily harm;
- Kidnapping resulting in great bodily harm;
- Criminal sexual penetration committed during another felony or while armed with a deadly weapon; and
- Armed robbery resulting in great bodily harm.

This bill strikes the current list of felonies, redefining "violent felony" in Sections 31-18-23 and 31-18-24 to mean any first or second-degree felony that involves the use or threatened use of force or violence.

Significant Issues

The Attorney General (AG) notes that the provisions of the bill, in conjunction with Section 31-18-24, "Violent Felony Sentencing Procedure," create the potential for a constitutional challenge to the statute under Apprendi v. New Jersey, 530 U.S. 466 (2000). In Apprendi, the United States Supreme Court held that any fact, other than the fact of a prior conviction, that results in an increase in a defendant's maximum possible sentence for the crime charged, must be found by a jury beyond a reasonable doubt. Section 31-18-24 provides that:

"The court shall conduct a separate sentencing proceeding to determine any controverted question of fact regarding whether the defendant has been convicted of three violent felonies. **Either party to the action may demand a jury trial....**In the case of a plea of guilty, the sentencing proceeding shall be conducted...**by a jury upon demand of the defendant.**" (Emphasis added)

Under the changes proposed by this bill, a prosecutor could seek a life sentence for a conviction for a first or second-degree felony committed by a defendant with two prior felony convictions. In such a case, a jury determination including findings that the felonies were committed with the use or threatened use of force or violence, would be necessary. If a defendant does not demand a jury and the judge imposes a life sentence, the changes proposed in this bill could result in a constitutional violation under Apprendi.

AG reports that under the current statute, a defendant's failure to demand a jury determination would not result in an Apprendi violation because, when a defendant is convicted of one of the listed offenses that are by definition violent felonies, the requirement of a jury determination of the commission of a violent felony has been met. (SEE ALSO TECHNICAL ISSUES)

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) notes that Section 31-18-23(B) NMSA requires there to be a separate sentencing hearing during which the sentence of life imprisonment shall be imposed. AOC indicates that as the definition of "violent felony" is broadened, the number of defendants subject to life imprisonment after a third violent felony will increase, resulting in additional hearings and cost increases for courts, district attorneys and PDD.

It is likely that the appellate caseload will increase, driving up costs for the AG, courts and PDD.

The Corrections Department (CD) notes that the bill will likely have the effect of increasing the prison population, resulting in increased costs to the department. CD also notes that as inmates

serving life sentences age, the costs of medical care will likely increase significantly.

CONFLICT

Conflicts with HB 42 (Mandatory Life Imprisonment), SB 75 (Life Without Release or Parole) and SB 104 (Life Imprisonment Without Parole or Release)

TECHNICAL ISSUES

If it is the Legislature's intent to expand the list of crimes that would render a defendant eligible for a life sentence upon his third conviction, AG proposes two alternatives that would avoid the Apprendi problem. 1) Add offenses to the current list of violent felonies or 2) Enact the changes proposed by this bill, at the same time amending Section 31-18-24 to require a jury trial at the sentencing hearing unless the defendant waives the jury. (SEE ALSO SIGNIFICANT ISSUES)

AOC notes that the current definition for "violent felony" is applicable to the entire Criminal Sentencing Act, but the definition provided by the bill is specific to Sections 31-18-23 and 31-18-24. AOC notes that a definition of "violent felony" should accompany its use in other areas of the Act.

JCF/ls