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## FISCAL IMPACT REPORT

SPONSOR: Adair DATE TYPED: 02/24/03 HB \_\_\_\_\_

SHORT TITLE: Sex Offenders Treatment & Parole SB 132

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$200.0		\$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Corrections Department (CD)  
 Department of Health (DOH)  
 Attorney General (AG)  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Adult Parole Board (APB)

### SUMMARY

#### Synopsis of Bill

Senate Bill 132 adds a new section to Chapter 31, Article 18 NMSA 1978, providing that a person convicted of first degree criminal sexual penetration of a child less than thirteen years of age shall, if paroled, undergo medroxyprogesterone acetate treatment (or its chemical equivalent) in addition to any other treatment or punishment prescribed for that offense by the sentencing court.

- Sex offenders to whom this would apply shall be exempt if they have already undergone a permanent surgical alternative to hormonal chemical treatment.
- The chemical treatment shall begin one week prior to the offender's release on parole

from the physical custody of the Corrections Department (CD) or another institution.

- The offender shall remain in the treatment program unless the Adult Parole Board (APB) demonstrates to the satisfaction of the sentencing court that the treatment is no longer necessary and the court enters an order to that effect.
- The federal Centers for Disease Control and Prevention shall administer and implement the protocols required by the bill.

The bill amends Section 31-21-10, regarding the authority of APB, mandating lifetime parole for individuals paroled as a result of a conviction as described in the new section. The bill strikes “a corrections facility” and inserts “an institution.”

The bill appropriates \$200.0 from the general fund to CD for expenditure in fiscal year 2004 for the purpose of implementing a hormonal chemical treatment program for sex offenders released on parole.

#### Significant Issues

If, as a matter of policy, the Legislature intends to reduce repeat offenses by individuals guilty of first degree criminal sexual penetration of children, it is not clear that mandating chemical castration for an entire class of offenders accomplishes the desired result.

The Attorney General (AG) notes that the bill does not provide for a chemical agent other than medroxyprogesterone, nor does it have an “opt out” provision for offenders for whom the hormonal therapy is medically contraindicated. AG notes that mandating a medically inappropriate treatment would seem to implicate the Eighth Amendment and reports that an alternative chemical agent is typically included in statutes of this sort. AG references Cal. Penal Section 645; Fla. Stat. Ann. 794.0235 (Supp. 2000).

AG reports that chemical castration treatment requirements during parole have been implemented in Georgia, Montana, Iowa, California and Florida, noting that ample precedent for medically appropriate treatment exists.

AG notes that the extension of the parole period for a certain class of offenders will likely be challenged under due process and equal protection theories and indicates that the bill would likely survive those challenges if amended to reflect other medical options.

PDD notes that in addition to post-conviction appeal issues, lifetime parole will probably also raise a significant number of Habeas petitions, particularly in cases where a parolee has already served a significant period of time in prison and declined chemical castration.

Department of Health (DOH) notes that according state and national experts on treatment of sexual offenders, chemical treatment using medroxyprogesterone acetate has had limited success and that it is unclear whether chemical castration intervention stops offenders who choose not to change their behavior. The department reports that the rationale driving other states’ use of medroxyprogesterone acetate for male criminal sex offenders is that the drug lowers blood serum testosterone levels, thereby also lowering sexual drive and aggression; however, it is possible for offenders taking this drug to engage in both criminal and non-criminal sexual behavior. Men

receiving chemical treatment may still attain an erection, ejaculate and engage in sexual intercourse. DOH recommends that chemical treatment, if used, be coupled with group or individual therapy, further noting that research related to "sex offenders" treatment suggests that taking medroxyprogesterone acetate or its equivalent is an effective treatment component for individuals whose sexual behavior is characterized as compulsive, and that it cannot be assumed that compulsivity is always characteristic of this particular subset of convicted offenders.

DOH reports that medroxyprogesterone acetate requires dosing every three months and that medical monitoring for potentially adverse drug effects requires monitoring at intervals consistent with the known adverse effects. DOH notes that offenders with an increased risk of permanent adverse effects should not be given chemical treatment.

DOH further notes that medroxyprogesterone acetate can cause side effects. According to the 2001 PDR, it is indicated only for pregnancy prevention. Contraindications include liver dysfunction or disease, active thrombophlebitis and/or cerebral vascular disease. Adverse reactions experienced by more than five percent of 3,900 subjects (all women) in clinical trials included headache, weight changes, backache and edema. In men, a potentially deadly adverse side effect is pulmonary embolus.

DOH notes the bill would require the parole board to demonstrate to the sentencing court that the parolee no longer needs to be treated with medroxyprogesterone acetate or its equivalent. DOH notes that this burden of demonstration is misplaced and that requirements may vary from court to court. APB shall be charged with lifelong monitoring individuals for compliance with parole conditions, also monitoring the effectiveness of a treatment for which little research exists. DOH suggests that the board would need to work with medical doctors or others who could monitor effectiveness of the treatment and that developing parameters of effectiveness will be extremely difficult.

### **FISCAL IMPLICATIONS**

The appropriation of \$200.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

The appropriation to CD, for the purpose of implementing a hormonal chemical treatment program for sex offenders released on parole, will cover only a portion of the costs to the department.

CD notes that the provisions of the bill, particularly the administration of the chemical treatment program, and the lengthening of parole terms for certain offenders for the period of their natural lives, pose a significant cost to the department. CD notes that the recurring costs associated with the chemical treatment program and with administering parole supervision will grow each year, as the number of parolees participating multiplies.

CD notes that it does not currently provide medical services to any parolees or probationers, but rather provides medical services through a contracted medical services provider for those offenders housed in its prisons. CD does not have sufficient funding to contract with physicians or medical service providers to carry out the provisions of the bill. Additionally, CD notes that monitoring compliance with the program will likely be costly and that increasing the length of

parole terms will prompt a corresponding increase in the number of parole violations, resulting in increased costs to house violators.

The Public Defender Department (PDD) estimates that the provisions of the bill will spur a demand for a minimum of three additional felony trial attorneys, two investigators, and two additional legal liaisons. Additionally, the department notes that many offenders will undoubtedly raise the issue of cruel and unusual punishment, the right to bear children, the right to privacy and other due process issues following conviction. PDD estimates a total cost increase of approximately \$300.0.

Courts, district attorneys and AG will likely see corresponding cost increases.

DOH notes that the Las Vegas Medical Center operates an eight-bed sex offender treatment program that would likely be impacted by the requirements of the bill.

## **CONFLICT**

Conflicts/Relates to HB 53; (proposing ten year parole for all sex offenders, including CSP 1<sup>st</sup> degree) SB 21, SB 88, and HB 165 (establishing an involuntary commitment process, independent of the New Mexico Mental Health and Developmental Disabilities Code for certain sexual predators)

## **TECHNICAL ISSUES**

CD notes that the bill's mandate that the CDC administer the protocols required by the bill violates the supremacy clause of the United State Constitution. CD recommends the bill suggest the state follow CDC protocols.

DOH notes that the CDC has no personnel stationed in New Mexico and that it is unknown whether CDC will issue new relevant protocols in the near future.

DOH notes that the language referencing "a permanent surgical alternative" is unclear, and raises questions regarding the efficacy of surgical castration for the treatment of sex offenders. DOH notes that a permanent surgical alternative to hormonal treatment for sex offenders does not exist, as effects of medroxyprogesterone acetate on the brain are not the same as the effects of surgical castration. DOH further notes that the use of surgical castration is not reversible and may be medically unethical.

DOH notes that the bill makes the assumption that all sex offenders are male and reports that medroxyprogesterone acetate (Depo-Provera) is unlikely to be effective for female sex offenders. Additionally, DOH reports that medroxyprogesterone acetate or its equivalent takes at least a month to reach efficacy so the requirement that treatment begin no later than one week prior to parole does not provide enough time for the chemical to become effective.

JCF/sb