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FISCAL IMPACT REPORT

SPONSOR: Martinez DATE TYPED: 10/29/03 HB 3

SHORT TITLE: 20-Year Probation for Sex Offenders SB

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
		Significant; See Narrative		Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to: HB 4, HB 5

Conflicts with: HB 2

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Corrections Department (CD)
- NM Sentencing Commission (NMSC)
- NM Public Defender Department (NMPDD)
- Department of Health (DOL)

No Response Received From:

- Department of Public Safety (DPS)
- Children Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 3 amends NMSA 1978, Section 31-20-5 (placing defendants on probation) and would add a new section, Section 31-20-5.1, to the NMSA.

Section 31-20-5 is amended to clarify that Subsection A does not apply to sex offenders, who instead are dealt with under the new Section 31-20-5.2.

A new section is added (Section 31-20-5.2 Sex Offenders – Period of Probation – Terms and Conditions of Probation), to mandate that prior to the release of a sex offender on probation, the district court shall conduct a hearing to determine the terms and conditions of probation. The initial period of probation shall be for a 5 year term, and the district court may extend the period of probation in 5 year increments up to 20 years total. The Bill also lists relevant factors the court may consider.

The new Section 31-20-5.2 requires the court to review the sex offender probationer's terms and conditions of probation at 2 1/2 year intervals. It also mandates that "the state shall bear the burden of proving to the district court that a sex offender should remain on probation." The court is authorized to decide to continue a sex offender's probation, but may remove conditions of probation that are no longer needed. The Bill lists probation conditions that may be required by the court, including intensive supervision, in- or out-patient treatment, abstention from alcohol and drugs, cessation of contact with individuals or classes of persons, and being subject to alcohol and drug testing, and polygraph examinations to determine if the offender is in compliance.

Section 31-20-5.2 also requires the court to notify the offender's counsel of record of the upcoming probation hearing. If the counsel of record provides good cause that they should not represent the offender at the hearing, then the chief public defender shall be notified and shall represent the sex offender at the probation hearing. The new Section would give the court the power to revoke probation or order additional probation conditions upon a finding of violation. "Sex offender" would be defined in the new Section to mean any person convicted of Criminal Sexual Penetration in the first, second, or third degree, Criminal Sexual Contact of a Minor in the third degree, or Sexual Exploitation of Children in the second degree.

Significant Issues

The proposed legislation would increase the minimum sentence faced by many sex offenders. There is a strong likelihood that such a penalty increase would result in a decrease in the number of plea bargains entered and a concomitant increase in the number of trials required.

Sex offenders are also rarely convicted on just one count – at least two counts is a common occurrence and often there are dozens of charges involved with sex offenses against minors. Whether or not these counts were run consecutively, the proposed legislation could greatly increase the time that sex offenders would remain on probation. The proposed legislation could ensure that sex offenders could remain on parole for much of their remaining natural lifespan. Additionally, since probationers often violate their conditions of probation, the extended period of probation will extend the timeframe within which the probationers might violate.

While HB 2 contemplates use of polygraph examinations to determine if offenders are in compliance with probation conditions, the New Mexico Supreme Court is presently considering whether to continue to allow such evidence at trials in the state. This decision might affect admissibility of such evidence at in-court probation hearings. This decision is unlikely to affect admissibility of such evidence at parole hearings, however.

According to the Corrections Department, studies and experience have demonstrated that many sex offenders continue to commit sex offenses well into middle and old age. They often commit dozens of offenses each year and are rarely apprehended because they target children and/or adult victims who do not report the crimes. Also, although there is no cure for sex offenders, their behavior can be controlled through treatment and intensive supervision, thus longer periods of probation and parole should be an available option.

FISCAL IMPLICATIONS

According to the Public Defender Department, three additional attorney personnel may be required to handle the likelihood of increased trial work and appellate work. These trials will be relatively long and complex, and will require the use of advanced attorney staff and expert witnesses. During the 2003 Regular Legislative Session, the Department estimated (for a similar bill) that \$389.3 would be needed for three felony attorneys, two investigators, two legal liaisons and for furniture and equipment.

In the long-term, there will be an increase in probation caseloads and perhaps an increase in the prison population due to the longer periods of probation, but this increase will be delayed for approximately 6 years because it will take about 1 year for offenders to be adjudicated under the new law, plus the offenders would still have served a 5 year period of probation under current law. Also, there is a good chance that the longer periods of probation and parole in conjunction with intensive supervision will result in a lower recidivism rate; and thereby offset some of the cost increases due to larger caseloads.

According to the Corrections Department, there will be minimal to moderate cost increase to the Department in the short term and substantial cost increases in the long term. This bill will increase probation and parole caseloads and may increase the prison population due to the longer periods of probation and parole, which will increase the chances of probation and parole violations. However, these should be offset somewhat from lower recidivism rates and a better quality of life for New Mexicans due to fewer people being the victim of sexual crimes.

Governor Richardson by executive order made approximately \$1.0 million in nonrecurring federal grant funds available to the Corrections Department to address concerns related to sex offenders. An additional \$3.4 million will also be incorporated into the Department's executive budget request for FY04 and FY05 to retain current probation and parole officers, to fund 10 new probation and parole officers, to lease state-of-the-art electronic monitoring devices, and for increasing prison sex offender treatment programs. Long-term prison population cost increases will be addressed in the future.

The enactment of HB 3 is likely to have some fiscal impact on the courts, possibly requiring additional judges, staff and monetary resources. Any time the prosecution or defense functions indicate that there will be an increase in attorney time (e.g., more hearings or more complex preparation for existing hearings), there will be a corresponding increase in trial court time. The passage of this bill may require additional expert witness funds and additional administrative and appellate resources

ADMINISTRATIVE IMPLICATIONS

According to the Corrections Department, this bill will result in an increase in the administrative burden on probation and parole officers and prison sex offender treatment personnel. This will require additional FTE's and associated resources, which will be addressed in the executive budget requests for FY 04 and FY 05.

CONFLICT, DUPLICATION, RELATIONSHIP

Relates to HB02, which contains very similar provisions.

Relates to HB04, which creates the Sex Offender Management Board

Relates to HB05, which mirrors this bill, but addresses parole rather than probation.

HB 3 conflicts with HB 2 as follows:

1) For purposes of probation of sex offenders, HB 2 includes the same offenses as defined in HB 3, but also includes the following in the definition of “sex offender” (meaning those persons to which the new law would apply):

- a) Kidnapping, as provided in Subsection C of Section 30-4-1 NMSA 1978;
- b) Criminal sexual contact of a minor in the second degree as provided in Section 30-9-13 NMSA 1978; or
- c) Sexual exploitation of children as provided in Section 30-6A-3 NMSA 1978.

2) HB 3 conflicts with HB 2 as to how the probation period may be ordered by the district court. HB 2 allows an initial period of probation of up to 20 years, while HB 3 provides for only 5-year increments with a maximum period of probation of 20 years. *Note HB2, as drafted is unclear as to whether it could actually provide for longer periods of probation than a maximum of twenty years since the bill provides that the district court may order an “initial period of probation” not to exceed twenty years (See HB 2, Section 31-20-5.2 (A) NMSA 1978).*

HB 3 and HB 2 both provide the same relevant factors for consideration by the district court in determining the duration, terms and conditions of probation and both bills provide for a review hearing at two and one-half year intervals.

TECHNICAL ISSUES

The term “intensive supervision” is not defined.

OTHER SUBSTANTIVE ISSUES

The provision that sets the initial period of probation at 5 years, but then allows the probation period to be extended may violate the general principle of law that once an offender is sentenced, the sentence cannot be increased.

AMMENDMENTS

Instead of an initial period of probation of 5 years, which can be extended to 20 years, set the initial period of probation as a period not to exceed 20 years.

On Page 4, line 23, change the word “parole” to “probation.”

Both HB 3 and HB 2 appear to contain a drafting error in their respective sections regarding reasonable terms and conditions of probation. **(Paragraphs 5 should read “...the terms and conditions of his probation).**

Corrections Department
Average Cost Per Inmate / Client
Based on FY 02 Actual Expenditures

Institution / Program	Cumulative Average Population/ Caseload	Average Annual Cost Per Inmate/ Client	Cost Per Day (In \$'s)
Penitentiary of New Mexico	603	\$ 42,966 ⁽⁴⁾	\$ 117.72
Western New Mexico Correctional Facility	394	35,890	98.33
Southern New Mexico Correctional Facility	763	31,921 ⁽⁵⁾	87.46
Central New Mexico Correctional Facility	1,186	29,504 ⁽⁶⁾	80.83
Roswell Correctional Center	116	37,549	102.87
PNM - South	162	53,250	145.89
Total Department Operated Facilities	3,224	\$ 34,857	\$ 95.50 ⁽¹⁾
CCA (Women's Facility)	512	\$ 25,117 ⁽⁷⁾	\$ 68.81 ⁽²⁾
Out of System (Males)	1,974	23,552	64.53 ⁽²⁾
Total Privately Operated Facilities	2,486	\$ 23,874	\$ 65.41
Institution Totals	5,710	\$ 30,075	\$ 82.40
Community Corrections (Privately Operated)	326	\$ 10,953 ^(3,8)	\$ 30.01
CC / Department Operated Programs	399	\$ 5,618 ⁽³⁾	\$ 15.39
Probation & Parole (Less ISP)	10,730	\$ 1,533	\$ 4.20
Intensive Supervision Program	435	\$ 2,964	\$ 8.12
Probation & Parole/Community Corrections Totals	11,890	\$ 1,981	\$ 5.43

Notes:

- (1) The Corrections Department institutions Cost Per Inmate is based on FY 02 expenditures, including allocations for Administration, APD Director, Training Academy, Health and Education Central Office.
- (2) The Out-of-System Cost Per Inmate is based on FY 02 expenditures, including allocations for Administration, APD Director, Health and Education Central Office.
- (3) Calculation is based on an annual cost per client. It is not based on the number of clients served. The average length of stay for a Community Corrections client is nine months.
- (4) Includes PNM North and PNM Minimum Restrict facilities.
- (5) Includes SNMCF Main and SNMCF Minimum Restrict facilities.
- (6) Includes CNMCF Main, CNMCF Minimum Restrict and CNMCF Minimum Facilities.
- (7) Includes cost allocated from the Women's Residential Program.
- (8) This component includes two contracts for residential treatment that increases the cost.

