

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Godbey DATE TYPED: 10/29/03 HB 5

SHORT TITLE: 20-Year Parole For Sex Offenders SB _____

ANALYST: Lockwood

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			Indeterminate (See Narrative)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 2, 3, 4 and 6

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		Minimal	Recurring	OSF

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General's Office (AGO)
- Corrections Department (CD)
- Public Defender Department (PD)

SUMMARY

Synopsis of Bill

The bill would amend existing law with regard to the maximum period of probation and conditions of probation for sex offenders. Under current law, the mandatory (maximum) period parole for these sex offenders is two (2) years. This bill would amend existing law to allow the period of probation for a sex offender to extend up to twenty (20) years. The bill defines "sex offender" to mean a person who is convicted of, pleads guilty to or pleads no contest to any one of the following offenses:

- (1) criminal sexual penetration in the first, second or third degree, as provided in Section 30-9-11 NMSA 1978;
- (2) criminal sexual contact of a minor in this second or third degree, as provided in Section 30-9-13 NMSA 1978; or
- (3) sexual exploitation of children in the second degree, as provided in Section 30-6A-3 NMSA 1978

Sex offenders are now addressed under a new Section 31-21-10.1 and the bill proposes to amend Section 31-21-10 to clarify that Subsection C does not apply to sex offenders. The bill also changes several instances of "a corrections facility" to the more general "an institution."

The new Section 31-21-10.1: Sex Offenders – Period of Parole – Terms and Conditions of Parole applies to all sex offenders, except those eligible for the medical and geriatric parole program as provided for in the Parole Board Act (*See* NMSA 1978, § 31-21-25.1). Key provisions of the bill are as follows:

1. The bill provides that prior to placing a sex offender on parole, the Parole Board shall conduct a hearing to determine the duration, terms and conditions of parole for the sex offender. A sex offender's initial period of parole shall be for a period of five years, but the Parole Board may extend the period of parole in five-year increments for a total period of up to twenty years. The Parole Board may consider any relevant factors, including:

- (a) the nature and circumstances of the offense;
- (b) the nature and circumstances of a prior sex offense committed by the offender;
- (c) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;
- (d) the danger to the community posed by the sex offender; and
- (e) a risk and needs assessment regarding the sex offender, prepared by the Sex Offender Management Board of the New Mexico Sentencing Commission or other appropriate entity.

2. The Parole Board must review the terms and conditions of a sex offender's parole at 2 1/2 year intervals. During the review hearing, the state shall bear the burden of proving to the Parole Board that a sex offender should remain on parole. The Parole Board may decide to continue a sex offender's parole but may determine that certain terms and conditions of parole are no longer necessary.

The Parole Board may order a sex offender placed on parole to abide by reasonable terms and conditions of parole, including:

- (a) being subject to the intensive supervision by a parole officer of the Corrections Department;
- (b) participating in an outpatient or inpatient sex offender treatment program;
- (c) a parole agreement by the sex offender not to use alcohol or drugs;
- (d) a parole agreement by the sex offender not to have contact with certain persons or classes of persons; and
- (e) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of his probation.

3. The Parole Board must notify the sex offender's counsel of record of the upcoming parole hearing for a sex offender and the sex offender's counsel of record shall represent the sex offender at parole hearing; unless the sex offender's counsel of record provides the court with good cause that counsel of record should not represent the sex offender. If the sex offender is subsequently unable to obtain counsel, the Parole Board shall notify the Chief Public Defender of the upcoming parole hearing and the Chief Public Defender shall make representation available to the sex offender at that hearing.

4. If the Parole Board finds that a sex offender has violated the terms and conditions of his parole, the Parole Board may revoke his parole or may order additional terms and conditions of parole.

Significant Issues

According to the AOC, the proposed legislation could ensure that most sex offenders would remain on parole for the majority of their natural life span. With this possibility, parolees may opt to go to trial, rather than enter into plea bargains. Such trials are complex in nature and require additional court hearings and use of expert witnesses. If the number of trials increases, there will be an additional need for funding of court, prosecution, and defense agencies, as well as a likely need for a minor increase for law enforcement agencies due to additional time spent as witnesses in trial. Such trials would result in an increased number of appeals and the need for increases in appellate resources. Any change in a criminal law will require appellate court time in construing the new statute.

According to the Attorney General's Office:

1. This proposal creates extended parole for sex offenders. Fiscal implications should be considered for both the Parole Board as well as administrative and legal costs. A prospective effective date should be included. Similar to the extended probation proposal, the procedural aspects should be considered. Notification to victim(s) is important and should be part of the proposed law.

2. The recommendations and adopting of standards would be required to implement and enforce the extended parole for sex offenders. Expert witnesses and advisers would be required.

One requirement for extended parole should include registration as a sex offender. An effective date for the application of extended parole should be included.

The intent of the extended parole period is reflected in the language, at page 6, is "A sex offender's initial period of parole shall be for a period of five years, but the board may extend the period of parole in five-year increments for a total period of up to twenty years." This language should be compared to the language used in House Bill 2: "A sex offender's initial period of parole shall be for a period not to exceed 20 years."

3. House Bill 5 contemplates the existence and recommendations for evaluation of a sex offender for parole made by the Sex Offender Management Board (see HB 2 and 4).

4. The definition of a "sex offender" may be expanded depending on the passage of those sex offenses against children contained in House Bill 2. For example, criminal sexual contact of a minor may be a second-degree felony as well as kidnapping that involves a child and a sexual offense. If passed, both new offenses should be included in the definition of sex offense.

According to the Public Defender:

1. Sex offenders are rarely convicted on only one count – at least two counts is a common occurrence and often there are dozens of charges involved with sex offenses against minors. The proposed legislation could ensure that sex offenders could remain on parole for much of their entire natural lifespan.

2. There is a possibility that the specter of such an extension of the restrictions on convicts' liberties might result in a decrease in the number of plea bargains entered and a concomitant increase in the number of trials required. Sex offense trials generally last at least several days and often as long as a week. Such trials always involve complex legal issues that require additional court hearings and the use of expert witnesses. If the number of trials increases, there will be an additional need for funding of court, prosecution, and defense agencies, as well as a likely need for a minor increase for law enforcement agencies due to additional time spent as witnesses in trial. These trials would result in an increased number of appeals, and increased appellate resources both for the Attorney General and the Public Defender would be needed.

3. While the Bill contemplates the use of polygraph examinations to determine if offenders are in compliance with parole conditions, the New Mexico Supreme Court is presently considering whether to continue to allow such evidence at trials in the state. This decision, however, is

unlikely to affect admissibility of such evidence at parole hearings.

4. The addition of duties to the Chief Public Defender may require an amendment of the Public Defender Act, NMSA 1978, Sections 31-15-1 to-12. Presently the Department of the Public Defender appears to be authorized only to represent individuals charged with crimes that carry a possible sentence of imprisonment and individuals in post-conviction proceedings. (See Technical Issues below)

According to the Corrections Department:

1. Studies and experience have demonstrated that many sex offenders, unlike other violent offenses, continue to commit sex offenses well into middle age and old age. They often commit dozens of offenses each year and are rarely apprehended because they target children; and even adult victims often do not report the crime. Although there is no "cure" for sex offenders, their behavior can be controlled through treatment and intensive supervision. This is the reason that longer periods of parole should be an available option.

2. A Sex Offender Management Board is necessary to study all the various options, conduct risk assessments and make recommendations tailored to individual cases so that resources are used most efficiently.

FISCAL IMPLICATIONS

The fiscal impact is indeterminate, but there will be recurring impact on the General Fund. There will be a fiscal impact on the courts, possibly requiring additional judges, staff and monetary resources. There will be an increase in attorney time (e.g., more hearings or more complex preparation for existing hearings), and 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. (See Administrative Impact below).

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.

ADMINISTRATIVE IMPLICATIONS

There may be administrative impacts on the courts as the result of an increase in caseload and/or in the amount of time necessary to dispose of cases.

The enactment of this bill is likely to have a slight to moderate impact on the performance of the Department of the Public Defender. The mandate that the PD engage in the totally new role of representing sex offenders at parole hearings will require the diversion of attorney, staff and monetary resources. Due to the complexity of the issues involved, these hearings could not be properly staffed by beginning attorneys, and would have to be covered by attorneys having attained operational or advanced roles. However, since this new parole-representation role will only begin when sex offenders convicted under the new law complete their underlying sentences and reach parole, the impact will be delayed by some years. An impact assessment prepared by the New Mexico Sentencing Commission estimates that the impact will begin to be felt in approximately FY2012, and will grow thereafter, beginning to shrink somewhat in approximately FY2025. Based on projected numbers, the increased caseload should be moderate, and may require additions to funding levels of attorney, staff and monetary resources.

The extension of parole time is likely to have an immediate moderate Department-wide resource impact due to the likelihood that somewhat fewer cases will plea. Accordingly, there will be a concomitant increase in the number of trials. Sex offense trials generally last at least several days and often as long as a week. Such trials always involve complex legal issues that require additional court hearings and the use of expert witnesses.

RELATIONSHIP

House Bill 5 relates to House Bills 2, 3, 4 and 6 that also address sex offender legislation.

TECHNICAL ISSUES

Enactment of this bill may require an amendment of the Public Defender Act, NMSA 1978, Sections 31-15-1 to-12. Presently the Department of the Public Defender appears to be authorized only to represent individuals charged with crimes that carry a possible sentence of imprisonment and individuals in post-conviction proceedings.

AL/lg:dm