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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/06
 LAST UPDATED 2/6/06 HB 283/aHJC

SPONSOR Balderas

SHORT TITLE Increase Certain Sex Offender Penalties SB _____

ANALYST Lewis

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY06	FY07		
	NFI*		

(Parenthesis () Indicate Expenditure Decreases)

*See narrative.

Relates to SM 12 (Study Lifetime Sex Offender Monitoring)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General (AGO)
- New Mexico Corrections Department (NMCD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Department of Public Safety (DPS)
- Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment eliminates the provision in the original bill that a perpetrator who commits criminal sexual penetration in the first degree and is found to be a continuing threat to the community is guilty of the new crime of aggravated criminal sexual penetration.

Synopsis of Original Bill

House Bill 283 creates a new crime of aggravated criminal sexual penetration (aggravated CSP) that includes CSP perpetrated

- 1) on a child under nine years of age;
- 2) with an intent to kill or with a depraved mind regardless of human life; or
- 3) by a perpetrator who commits CSP in the first degree who is found to be a continuing threat to the community.

Whoever commits aggravated criminal sexual penetration is guilty of a first-degree felony, punishable by life imprisonment and a fine not to exceed \$17, 500.

HB 283 also amends the definition of criminal sexual penetration in the second degree by removing the requirement that the perpetrator be “in a position of authority over the child.” As a result, CSP committed on a child between the ages of 13 and 18 by the use of force or coercion is raised from a third degree felony to a second degree felony.

This bill also amends the parole authority statute, making anyone who was sentenced to life imprisonment, including those convicted of aggravated CSP, ineligible for parole until they have served 30 years of their sentence.

When sentencing a sex offender, the district court is currently required to include a provision in the judgment that requires the offender to serve an indeterminate period of not less than five years and not in excess of 20 years of supervised parole. HB 283 allows the court to extend the indeterminate period up to the natural life of the sex offender for the offenses of

- aggravated criminal sexual penetration,
- criminal sexual penetration in the first or second degree,
- criminal sexual contact of a minor in the second or third degree, or
- sexual exploitation of children by prostitution in the first or second degree.

The bill also changes the state’s burden of proof, when arguing that a sex offender should remain on parole after the initial five-year period, from “proving to a reasonable certainty” to “proving by clear and convincing evidence” that the sex offender should remain on parole.

FISCAL IMPLICATIONS

According to the New Mexico Corrections Department (NMCD), it is difficult to accurately predict how many individuals will be convicted of this new crime. Even a few such convictions each year could have a significant impact on NMCD’s budget, because the conviction for aggravated criminal sexual penetration carries an automatic life sentence, with 30 full years of imprisonment before becoming eligible for parole. Individuals receiving life sentences increase the prison population because they are not eligible to earn “good time” during their 30 year minimum incarceration period. The negative fiscal impact is exacerbated by the fact that sex offenders may now be required to serve parole terms lasting the remainder of their natural lives, which could dramatically increase parole caseloads and parole supervision costs. According to NMCD, parole costs for sex offenders are already higher because of the need for intensive supervision.

NMCD notes that there is no appropriation to offset the increased prison and parole supervision costs. Any revenues created by this bill (such as the increased parole supervision fees paid by those sex offenders who remain on parole for extended periods) would not be sufficient to offset the increased prison and parole supervision costs associated with this bill. According to NMCD, the contract/private prison annual costs of incarcerating an inmate is \$23,160 per year for males. The cost per client to house a female inmate at a privately operated facility is \$24,961 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population

would be housed at a contract/private facility. NMCD further states that the cost per Probation and Parole client in intensive supervision programs is \$4,256 per year.

In addition, the Administrative Office of the District Attorneys (AODA) notes the potential that increased caseloads in the District Attorneys' Offices may require additional resources.

SIGNIFICANT ISSUES

Both the AGO and Administrative Office of the Courts (AOC) note that, with regard to the new crime of aggravated criminal sexual penetration, HB 283 neither defines "continuing threat to the community," nor provides guidance to the finder of fact as to how to make the determination that a person is such a continuing threat.

ADMINISTRATIVE IMPLICATIONS

According to NMCD, this bill will have minimal to moderate administrative impact on the department to the extent that current department staff are required to provide services to increased numbers of inmates and parolees.

The AODA notes the likelihood of increased trial loads in the District Attorneys' Offices.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

As noted by the Department of Public Safety (DPS), the consequences of not enacting this bill are that the status quo will remain; the State will not incarcerate for lifetime those most serious sex offenders; and the state be unable to keep the most serious sex offenders on lifetime parole.

ML/yr:mt