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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09

SPONSOR     Martinez     LAST UPDATED                      HB                     

SHORT TITLE     Noncapital Felony Sentencing Guidelines     SB     655    

ANALYST     Weber    

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney (AODA)
- Attorney General (AGO)
- New Mexico Sentencing Commission (NMSC)
- New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 655 changes the sentencing scheme for noncapital felonies by assigning a range of possible sentences within the discretion of the court. This range encompasses what was previously aggravation and mitigation of a sentence; the statute setting out how sentences are aggravated or mitigated, Section 31-18-15.1 NMSA 1978, is repealed under SB 655.

The chart below thoughtfully provided by the AOC shows the changes made to Section 31-18-15 NMSA 1978 in SB 655.

DEGREE OF FELONY	CURRENT SENTENCE	NEW SENTENCE
First degree resulting in death of a child	Life Imprisonment	Life Imprisonment
First degree for aggravated criminal sexual penetration	Life Imprisonment	Life Imprisonment

First degree	18 years	Not less than 12 and not more than 24 years
Second degree resulting in death of a human being	15 years	Not less than 10 and not more than 20 years
Second degree for a sexual offense against a child	15 years	Not less than 10 and not more than 20 years
Second degree	9 years	Not less than 6 and not more than 12 years
Third degree resulting in death of a human being	6 years	Not less than 4 and not more than 8 years
Third degree for a sexual offense against a child	6 years	Not less than 4 and not more than 8 years
Third degree	3 years	Not less than 2 and not more than 4 years
Fourth degree	18 months	Not less than 1 and not more than 2 years

**FISCAL IMPLICATIONS**

The NMCD notes that it is difficult to assess the financial impact of this bill on the Corrections Department. It could lead to longer sentences on average, to shorter sentences on average, or to no changes in the average sentence. At least one other state using a similar sentencing range has indicated that the average sentence is now longer. Obviously, longer sentences tend to increase the NMCD prison population. Thus, the bill could have a moderate to substantial fiscal impact on the Department.

**SIGNIFICANT ISSUES**

The NMSC offers the following comments.

The bill is a constitutionally viable response to a line of federal and state appellate decisions regarding sentencing law, including a New Mexico Supreme Court case (*State v. Frawley*) which declared that it was unconstitutional to alter a defendant’s basic sentence upon a finding by a judge of aggravating circumstances surrounding the offense or concerning the offender. SB 655 was considered by the New Mexico Sentencing Commission during the 2008 interim as a possible remedy for the Frawley decision. After due deliberation, the members of the Sentencing Commission instead decided to endorse the alternate approach set forth in HB 208 (2009). HB 208 amends Section 31-18-15.1 NMSA 1978 to provide for a finding by a jury of aggravating circumstances beyond a reasonable doubt surrounding the offense or concerning the offender. HB 208 does not alter the current system of determinate sentencing in New Mexico. During the 2008 interim, the approach set forth in HB 208 was also endorsed by the interim legislative Courts, Corrections and Justice Committee.

The states of Indiana and Tennessee have enacted sentencing laws similar to the approach set forth in SB 655. Tennessee enacted such legislation in 2005. According to a report published by the Tennessee Governor’s Task Force on the Use of Enhancement Factors in Criminal Sentencing, the length of sentences for lesser felonies have increased upward since that approach was enacted.