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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/31/11

SPONSOR Chavez, D. LAST UPDATED \_\_\_\_\_ HB 164

SHORT TITLE Criminal Code Definition of Community Service SB \_\_\_\_\_

ANALYST Graeser

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Parole Board  
 Administrative Office of the Courts (AOC)  
 New Mexico Corrections Department (NMCD)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of Bill

House Bill 164 proposes to eliminate the discretion of courts to determine the type of labor and period of service when ordering community service as a condition of a deferred or suspended sentence. The bill specifically replaces the current Sec 31-20-6 definition of "community service", being labor that "benefits the public at large or a public, charitable or educational entity or institution", with "cleanup projects to remove debris, rubbish or trash to beautify New Mexico" for municipal or county governments or the tourism department or to benefit private property with a preference for New Mexico businesses.

### FISCAL IMPLICATIONS

In general, this bill may result in a loss of community service provided to the public at large and to charitable and educational entities and institutions. Winners may be government entities specifically and private or not-for-profit businesses that may receive services that remove debris, rubbish or trash.

AOC reports minimal fiscal impact.

## **SIGNIFICANT LEGAL ISSUES**

The AGO identifies two issues:

[The bill] takes away judicial discretion to determine the type of labor and period of service for community service. [At the same time, it] reduces the positive impact to the public at large and public, charitable and educational entities and institutions down to solely government entities and business.

[The bill invokes a concern regarding] legal and ethical issues as to whether private entities and businesses should benefit from labor meant as “community” service, especially that labor resulting from a sentence arising out of a criminal offense under the Criminal Code.

AOC questions whether the state can offer community service labor to private entities without violating the anti-donation clauses of the state Constitution and provision of services to a private entity would arguably violate several provisions of the Supreme Court’s Code of Judicial Conduct, NMRA 2011, Chapter 21.

## **SIGNIFICANT ISSUES**

NMCD comments of the ultimate effect of this bill:

This bill would affect probationers being supervised by NMCD. It is assumed that there would be enough highway and road beautification work for all such probationers. Some probationers might be less likely to recidivate if they could perform community service more specifically tailored by the sentencing judge. However, it is not clear if having every probationer perform highway or road cleanup could help reduce or increase recidivism rates.

Finally, the joint powers and other agreements concerning the performance of this community service will need to address who is responsible for any injuries suffered by the probationers during their performance of the community service.

It is possible that the impetus for this bill was a particular community service tailored by a judge that may be viewed as “too lenient.” Replacing judicial judgment concerning appropriate community service with the only option of manual cleanup work might reduce the value of the penalty in preventing recidivism. Alternative sentencing modalities to reduce recidivism is an ongoing area of research in many academic institutions. Unfortunately, NMCD was unable to provide suitable data in this regard.

## **ADMINISTRATIVE IMPLICATIONS**

NMCD comments:

It is assumed that the probationer would be responsible for transporting himself or herself to the highway beautification project, and that NMCD’s probation and parole officers would not be responsible for supervising the probationer during the community service. NMCD obviously does not have the manpower to transport or supervise offenders performing community service.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The public at large, public, charitable or educational entity or institution which would lose the benefit of community services under this bill would retain the services currently provided if the bill is not enacted. Individuals whose community service is carefully tailored by a judge would provide substantially more value added to those services and, perhaps, be less likely to repeat the offense.

LG/bym