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FISCAL IMPACT REPORT

ORIGINAL DATE 03/03/11

SPONSOR Strickler LAST UPDATED _____ HB 204

SHORT TITLE Life Imprisonment for Three Violent Felonies SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$171.3- \$2,000.0	\$171.3- \$2,000.0	\$342.6- \$4,000.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 74

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 204 makes additional violent felonies and their equivalents in other jurisdictions subject to mandatory life imprisonment following conviction for a third violent felony. The new “violent felonies” (including certain violent felonies already subject to mandatory life imprisonment enhancement with the “resulting in great bodily harm” element removed) are voluntary manslaughter, third degree aggravated battery, second or third degree shooting at an occupied building, second or third degree shooting at or from a motor vehicle, third degree aggravated battery against a household member, first degree kidnapping, aggravated first or second degree criminal sexual penetration, second or third degree criminal sexual contact, first or second degree robbery, second degree aggravated arson, aggravated assault on a peace officer, assault with intent to commit a violent felony against a peace officer, and third degree aggravated battery against a peace officer.

The effective date of this bill is July 1, 2011.

FISCAL IMPLICATIONS

It can be anticipated that there may be fewer plea agreements due to a sentence of mandatory life imprisonment imposed under this bill, which would at a minimum increase the number of jury trials in the district courts, with a corresponding impact on the jury fund. Data provided by AOC include costs incurred for prosecution, defense and judicial time for cases that go to trial, plus an average of \$7,500 per trial for jury costs. Assuming ten additional trials per year, those costs would be \$171,300. Additionally, the PDD estimates that it would require a minimum increase of \$2 million to address both trial and appellate caseload increases. Although some of those costs are included in the \$171,300 figure, others (trial preparation by both DA and PDD staff, expert witness fees and appellate-level work by the PDD, the AGO and the judiciary) are not. The range set in the table assumes ten additional trials per year plus an additional amount to cover those additional costs up to a total of \$2,000,000 per year. The range does not reflect the costs of incarceration for the increased penalties, since the impact of the additional prison time will occur after the three year period covered by the table.

SIGNIFICANT ISSUES

The major focus of all responding agencies' analyses is the budgetary impact of this bill, which expands the number of felonies that are subject to the "three strikes" law and its enhanced penalty after the third violent felony to mandatory life imprisonment (a straight 30 year sentence with no good time allowed before becoming eligible for parole). Each of these agencies anticipate significant increases in expenditures and workloads as a result of the imposition of that penalty.

The AOC reports:

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees.

The PDD echoes that impact:

Because the bill would result in life sentences for so many additional crimes, it is safe to assume that there will be many more trials required. Presently, plea deals can often be worked, however, if a person is facing the third (and even the second) charge that would lead to life imprisonment, there is no incentive whatsoever for that person to take a plea. The accused will be going to trial. Since the offenses are serious offenses, they must be tried by experienced senior trial attorneys on both sides. Passage and enactment of this bill would result in a profound increase in the number of trials and appeals.

The NMCD also predicts increasing costs following conviction:

If numerous new or enhanced crime bills such as this one are passed, NMCD will eventually reach its rated capacity for its prison population. Increasing the number of life sentences, which this bill does, is going to accelerate NMCD reaching its rated capacity. When the prisons are full, NMCD and/or the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space

to existing prisons. All of these options have negative consequences. Housing prisoners out of state and building new prison space are both expensive options, and the early release of prisoners jeopardizes public safety.

In addition to those costs, the NMCD notes other costs specific to life imprisonment:

Inmates serving life sentences tend to need a substantial amount of medical care in their later years of incarceration as they age and develop medical problems. The cost of inmate medical care continues to increase for all inmates, and this seems unlikely to change in the future.

The PDD raises a separate concern which may increase costs even more:

The bill's provision that "equivalents" from other jurisdictions could support a life sentence in New Mexico is certain to bring a continual stream of litigation to the appellate courts, challenging whether a given crime is the equivalent of New Mexico's.

ADMINISTRATIVE IMPLICATIONS

Life imprisonment cases require the dedication of considerable time and resources by prosecutors, the PDD, the judiciary, and the NMCD.

DUPLICATION

HB 204 conflict with SB 74 to the extent it allows the imposition of a mandatory life sentence for felonies in other jurisdictions that are equivalents to the violent felonies listed in the bill. In all other respects, the two bills are duplicates.

OTHER SUBSTANTIVE ISSUES

The NMCD points out that inmates serving life sentences have the tendency to cause problems and disturbances in prison because they know it will be so long until they are even eligible for parole. Their low morale or lack of concern due to the very long sentences they are serving often makes these inmates high risk and high maintenance. They are thus more costly and more staff intensive than an average inmate.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AODA comments:

Only five felonies will continue to be used to enhance a defendant's sentence to life in prison when the defendant is convicted of his third violent felony. Costs would remain as they are today.

By not adding some or all of the nine new felonies, offenders will get out of prison earlier than they would have if they had received this life in prison enhancement. That could result in those offenders committing more crimes and injuring more citizens, thus making our communities less safe.