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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11
SPONSOR Garcia, T. LAST UPDATED _____ HB 363
SHORT TITLE Certain Sexual Penetration, Life Imprisonment SB _____
ANALYST Aledo

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$1,250.0	\$1,250.0	\$2,500.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 152 and HB 28

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Public Safety (NMDPS)
Administrative Office of the District Attorneys (AODA)
Public Defender Department (PDD)
Administrative Office of the Courts (AOC)
Attorney General's Office (AGO)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 363 amends the criminal sexual penetration section of the Criminal Code to make all criminal sexual penetration perpetrated on a child under thirteen punishable by life imprisonment. In other words, criminal sexual penetration on a child under thirteen would be considered aggravated. HB 363 removes the intent to kill or depraved mind requirement for aggravated criminal sexual penetration on a child under 13. The bill then eliminates "children under 13" in the definition of criminal sexual penetration in the first degree because all such crimes will now be aggravated criminal sexual penetration.

This bill would also provide that there would be no statute of limitation for the prosecution of any first degree felony (presently, the statute limits this to *violent* first degree felonies). Therefore, this bill would remove the limitations period for all other first degree felonies, which generally consist of child abuse resulting in death or great bodily harm, trafficking controlled

substances (second and subsequent offense, but first offense if done in a drug free school zone), human trafficking (when the victim is under the age of 13), distribution of marijuana of over 100 pounds (second offense), and distribution of certain controlled substances to a minor (second offense).

FISCAL IMPLICATIONS

Increasing penalties will impact the workload of the judiciary, public defenders and corrections.

The Administrative Office of the District Attorneys points out that by making all criminal sexual penetration on a child under 13 an aggravated first degree felonies, without the need to prove an intent to kill or “depraved mind regardless of human life”, it will be easier to prove aggravated criminal sexual penetration which may result in more prosecutions. The AODA states that the fiscal impact to their agency would be minimal, if any.

The Public Defender Department warns that the fiscal impact of proposed changes to the criminal law, although difficult to quantify, would be profound. The PDD has provided the following estimation of the possible fiscal impact on the agency:

The Public Defender Department is presently running a 20% vacancy rate in order to stay within budgetary constraints. This would not be possible should many more potential life sentences be injected into the justice system. The Department would need to fill every high level attorney position it has in order to meet the upswell of trial work that would be guaranteed by the enactment of this bill into law. Additionally, enactment of the bill would require that the cases be handled by two senior trial attorneys internally, or the (frequently required) case of contract attorneys (presently paid \$750 to handle a first degree case) would be \$5400 to handle each case, and each case would require a co-chair at the rate of \$2700. Each case would require additional investigation, mandatory psychological testing, and second-chair lawyer resources. The Department’s best estimate of these additional costs is that they would conservatively amount to \$15,000 per trial. And, because of the life sentence that would be attached to these crimes, every case charged under the amended statute would be likely to proceed to trial.

The Department does not possess the ability to predict how many criminal sexual penetration of under-13-year-old victims will be filed. The budgetary impact numbers set forth supra are based on interviews with senior departmental attorneys who have given their best estimations of the likely case filings under the proposed law. The budgetary impact numbers set forth herein presuppose a very conservative 50 cases statewide per annum to 100 cases a year – the range is subject to further analysis and the additional budgetary impact could of course be greater still if more cases turn out to be filed. The additional \$750,000 to \$1,500,000 in trial cost would represent circa 2-4% of the Department’s present budget and would not be able to be absorbed in the ordinary course of business.

The Administrative Office of the Courts noted that any additional fiscal impact on the judiciary would be proportional to commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. It is likely with such an increase in penalty that there will be more litigation and more trials in cases charged with an aggravated criminal sexual penetration. This will increase use of time and resources for the judiciary. The cost of this increase is unknown at this time.

NMCD cautions that this bill is likely to result in a moderate to substantial number of new felony convictions and thus has the potential to be expensive to NMCD. It is very difficult for NMCD to estimate a fiscal impact resulting from this bill, however, NMCD estimates that the fiscal impact will be \$100,000 to \$500,000 over the relevant three year period

NMCD provided the following costs details:

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$49,347 per year in a state owned/ operated prison to \$31,239 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,521 per year. The cost per client in Intensive Supervision programs is \$3,445 per year. The cost per client in Community Corrections is \$3,475 per year. The cost per client per year for female residential Community Corrections programs is \$41,653 and for males is \$24,803.

ADMINISTRATIVE IMPLICATIONS

NMCD warns that new crime bills which result in a substantial increase of criminal convictions and thus an influx of more first degree felony offenders will soon result in NMCD reaching its rated capacity for its prison population; especially since many of these offenders have committed what are defined as serious violent offenses (which allow for only up to four days of good time per month as opposed to thirty days per month for other crimes). NMCD is already experiencing almost a 19% vacancy rate for its correctional officers, and a 15% vacancy rate for its probation and parole officers. At that point which NMCD reaches its rated capacity, 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.

MCA/svb