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FISCAL IMPACT REPORT

ORIGINAL DATE 03/01/11

SPONSOR Kintigh LAST UPDATED _____ HJR 6

SHORT TITLE Imposition Of Death Penalty, CA SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$104.0			Nonrecurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Corrections Department (CD)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Joint Resolution 6 proposes to amend Article 6 of the constitution of New Mexico by adding a new section to read that the death penalty shall be imposed for all capital felonies where a jury finds, beyond a reasonable doubt, one of the following circumstances:

- (1) the victim was a peace officer who was acting in the lawful discharge of an official duty when murdered;
- (2) the victim was a person under 18 years of age;
- (3) the murder was committed with intent to kill in the commission of or attempt to commit kidnapping or criminal sexual penetration;
- (4) the murder was committed with the intent to kill by the defendant while attempting to escape from a penal institution of New Mexico;
- (5) while incarcerated in a penal institution in New Mexico, the defendant, with

the intent to kill, murdered a person who was at the time incarcerated in or lawfully on the premises;

(6) while incarcerated in a penal institution in New Mexico, the defendant, with the intent to kill, murdered an employee of the CD;

(7) the capital felony was committed for hire; or

(8) the capital felony was murder of a witness to a crime or for retaliation for having testified in any criminal proceeding.

The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

FISCAL IMPLICATIONS

According to the SOS in 2010, the Constitutional Amendments placed on the ballot are very costly. The previous 2008 General Election had five Constitutional Amendments that cost the State of New Mexico over \$520,000. Each amendment cost approximately \$104,000. These amendments have to be published in English and Spanish in a major recognized newspaper in every county statewide.

According to the PDD, reinstating the death penalty would cost New Mexico millions of dollars. The State Bar Task Force on the Administration of the Death Penalty in New Mexico Final Report, completed in 2004, outlines exactly why death penalty cases are so costly: These cases require heightened standards for defense counsel and at least two highly qualified defense attorneys at each stage of proceedings. They require extensive trial level litigation as well as constitutionally and statutorily mandated appeal. Unlike any other criminal trial, these cases demand that a certified court reporter transcribe all proceedings. The survivors of the victim should be accorded particular respect. Jury selection is a long, arduous process that potentially touches on the constitutional and religious rights of New Mexicans, and costs at least four times as much as a non-death first-degree murder case. Due to changes in federal habeas corpus law, these cases must be long and thoroughly litigated in state court habeas proceedings as well. The Task Force ultimately recognized and recommended substantial changes to the way death penalty cases are prosecuted and defended in New Mexico, which may further increase costs.

Although a study has never been done in New Mexico on the total costs of a death penalty case to the state including the prosecution, the public defender, and the extensive drain on court resources, a recent Duke University study done on North Carolina's costs found that the death penalty costs North Carolina \$2,160,000 per execution over a system that imposes life imprisonment.

According to the PDD, for three defendants in the Santa Rosa death-eligible prison killing, over a nine-year period, this department spent almost 1 million dollars on expert costs alone. At the height of the billing requirements, a single death eligible case can cost the PDD 1% of its budget. No other kind of criminal case comes remotely close to this cost per case, or per defendant.

The PDD believes New Mexico does not receive much return on its death penalty investment. Fewer than half of the cases in which the prosecutor seeks the death penalty end in a death sentence. And, according to the National Bureau of Justice Statistics, 68% of all these convictions are overturned on appeal—the highest overturn rate in the United States. Therefore, less than one-fourth of all death penalty prosecutions ultimately result in a defendant going to death row in New Mexico. Finally, New Mexico’s actual execution rate is even lower than the 12% of all convicted and sentenced murderers ultimately executed, nationally. Taking this data to its logical conclusion, there is only a 4.5% chance that any multi-million dollar death penalty prosecution will ever end in an execution in New Mexico.

According to the AOC, to assemble a jury for a death penalty case, the district court will summon as many as 1,000 people. An estimate of what a death penalty case cost for the jury and witness fee fund is approximately \$20,000-\$25,000. In contrast, a non-death penalty murder case cost approximately \$7,000-\$8,000.

New Mexico has first-hand experience with the costs of death penalty litigation. In State v. Young, the New Mexico Supreme Court found “it is indisputable that the prosecution and defense of capital murder cases are substantially more expensive than in non-capital cases.” The Supreme Court discusses why such cases cost significantly more than any other type of criminal case. In Young, the Legislature had appropriated \$870,000 for defense expert witnesses, as well as more than \$300,000 for defense attorneys, who contended that at least \$200,000 per defense team was needed to provide constitutionally adequate representation. The case does not detail the prosecution costs. The Supreme Court held that, unless additional funds were appropriated for the defense teams, the death penalty could not be imposed. The Legislature did not appropriate the funds and, when the case returned to district court, the death penalty was abandoned.

It is difficult to calculate what additional resources would go to death penalty cases, in part because it is impossible to know how many cases would be brought. A 2009 report from the Death Penalty Information Center analyzes, in light of “reconsidering the death penalty in a time of economic crisis” the costs of death penalty litigation, their causes, and whether costs could be reduced.

SIGNIFICANT ISSUES

The resolution would require state district courts to apply federal procedure and jury instructions to death penalty cases. Ordinarily, procedures and jury instructions are the sole prerogative of the New Mexico Supreme Court. The basis for this prerogative is, however, the New Mexico constitution’s division of duties among the three independent branches of government. If the constitution is amended, then presumably this prerogative can be limited to the extent that the amendment specifically requires the courts to conduct death penalty cases in a particular way.

CD believes that restoring the death penalty in New Mexico could deter current CD inmates from killing CD staff and inmates in the future in order to avoid the death penalty. CD staff morale may improve if the death penalty is re-imposed because it shows that New Mexico values the lives and dangerous work of CD staff.

As of April 1, 2008, the Death Penalty was authorized by 37 states, the Federal Government, and the U.S. Military. Those jurisdictions without the Death Penalty include Alaska, Hawaii, Iowa,

Maine, Massachusetts, Michigan, Minnesota, New Jersey, North Dakota, Rhode Island, Vermont, West Virginia, and Wisconsin and the District of Columbia.

Capital punishment was suspended in the United States from 1972 through 1976 primarily as a result of the Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972). In this case, the court found the imposition of the death penalty in a consolidated group of cases to be unconstitutional, on the grounds of cruel and unusual punishment in violation of the eighth amendment to the United States Constitution.

Capital punishment is often the subject of controversy. Opponents of the death penalty argue that it has led to the execution of innocent people, that life imprisonment is an effective and less expensive substitute, that it discriminates against minorities and the poor, and that it violates the criminal's right to life. Supporters believe that the penalty is justified for murderers by the principle of retribution, that life imprisonment is not an equally effective deterrent, and that the death penalty affirms the right to life by punishing those who violate it in the strictest form.

ADMINISTRATIVE IMPLICATIONS

The administrative and performance implications for the courts, the PDD, the several offices of the district attorney and the police agencies would be extensive. Because of greatly enhanced standards of performance imposed by the state and federal constitutions and by the New Mexico Statutes and Rules of Criminal Procedure, when the state endeavors to take the life of a human being, all agencies involved are obliged to commit tremendous human and administrative resources, and tremendous time, to the process. Under the prior law, death penalty cases always drained resources normally directed to the core functions of the agencies. And in the 30 years under the old law, all this commitment of time and resources resulted in exactly one execution.

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