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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/26/12

SPONSOR Garcia, T. LAST UPDATED \_\_\_\_\_ HB 128

SHORT TITLE Life in Prison for Certain Sex Crimes SB \_\_\_\_\_

ANALYST Sánchez

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

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$6,237.6	\$6,237.6	\$12,475.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates SB58

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of Bill

House Bill 128 amends Section 30-1-8 NMSA 1978, “Time Limitations for Commencing Prosecution” by removing the requirement that a first degree felony be “violent”, and amends Section 30-9-11 NMSA 1978, Criminal Sexual Penetration the requirement that aggravated criminal sexual penetration on a child be “with the intent to kill or with depraved mind regardless of human life” and removes the requirement that the child in question be under the age of thirteen. The penalty for the crime remains a life sentence.

The change to the law has an effective date of July 1, 2012.

### FISCAL IMPLICATIONS

The Corrections Department (NMCD) reports that this bill in the interest of enhancing public safety, it is likely to result in a moderate to substantial number of new felony convictions by eliminating the statute of limitation for all first degree felonies and by removing the intent or

mens rea elements from the crime of aggravated criminal sexual penetration. It is very difficult for NMCD to estimate a fiscal impact resulting from this bill because it cannot control who is convicted and sent to its custody or supervision. However, because this bill eliminates the statute of limitations for all first degree felonies and is likely to result in a few more convictions for aggravated criminal sexual penetration, NMCD estimates that the fiscal impact will be anywhere from \$100,000 to \$500,000 over the relevant three year period. Of course, this estimate could be high or low. There is no appropriation in the bill to cover these incarceration costs, or any probation/parole supervision costs.

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 \$36,700 per year in a state owned/ operated prison to \$30,093 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$32,408 per year. 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 \$2,608 per year. The cost per client in Intensive Supervision programs is \$1,068 per year. The cost per client in Community Corrections is \$5,524 per year. The cost per client per year for female residential Community Corrections programs is \$39,149 and for males is \$16,805.

The Administrative Office of the Courts reports that life imprisonment cases take up a considerable amount of judicial time. The sanction of life imprisonment (the penalty for aggravated criminal sexual penetration) is so severe that many accused persons will 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. These additional costs are not capable of quantification.

According to the Public Defender Department (PDD), passage and enactment of HB 128 would carry with it significant fiscal impact for the Public Defender Department, DAs, AG, and courts. Based on the PDD case management system, it opened 120 cases of criminal sexual penetration under the age of 13 in FY11. The department would be required to provide defense counsel services to 120 cases versus 16 under the existing law. The change would require ten senior trial attorneys, an administrator, three support staff, an investigator, expert witnesses, office space and equipment totaling \$2,712 thousand.

Based on the cases filed at the PDD for representation, the potential increase to the inmate population at the NMCD is 104 additional inmates assuming all are convicted and sent to prison. The increase in inmates translates into \$3,525.4 thousand additional costs to the NMCD.

The total fiscal impact to the state just for two of the agencies is \$6.2 million assuming no increases in salaries and benefits for the PDD or care and support of inmates.

## **SIGNIFICANT ISSUES**

According to the NMCD, if numerous new crime bills such as this one (that result in an increase in criminal convictions) are passed, NMCD will eventually reach its rated capacity for its prison

population. At that point, 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 potential negative consequences. Early release of prisoners jeopardizes public safety, and housing prisoners out of state or building new prisons is expensive.

According to the AOC, as penalties increase, potential imprisonment, particularly life imprisonment, tends to inspire defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services. 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, and courtroom availability and jury fees. These additional costs are not capable of quantification.

The PDD reports that it is currently running a 22.4+ percent vacancy rate to stay within budgetary constraints. It would not be possible to increase its caseloads from life sentence cases with its current vacancy rate.

According to the PDD, in general, increasing penalties impacts the workload of the judiciary, prosecutors and public defenders, as well as that of the Corrections Department. Because of the mandatory life sentence that would be attached to a conviction, many cases charged under the amended statute would proceed to trial – at present many plead out. Any conviction would require a senior appellate attorney on both sides to handle the appeal – in addition to Court and NMCD resources.

## **PERFORMANCE IMPLICATIONS**

Increases in the inmate population could impact inmate-on-inmate or inmate-on-staff assaults, and the community offender management performance measure of “percent of out-of-office contacts per month with offenders on high and extreme supervision on standard caseloads”.

The AOC reports that it cannot fully determine if the bill would impact its performance measures as they relate to judicial budgeting.

## **ADMINISTRATIVE IMPLICATIONS**

According to the NMCD, a steady influx of more first degree felony offenders will soon result in NMCD reaching its rated capacity for its prisons, 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 significant vacancy rates for its correctional officers and probation and parole officers. Current staff members are already being asked to do more with less. This difficulty in having enough staff available to prison-related and probation/parole supervision-related services will only be exacerbated by any law such as this one which results in a moderate to substantial number of new first degree felony convictions.

According to the AOC, new laws, amendments to existing law and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase. There is an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB58

Relates to HB31 and SB37

## TECHNICAL ISSUES

According to the AOC, a technical issue exists with respect to sentencing under Section 31-18-25(F), NMSA, which provides as follows:

- (F) As used in the Criminal Sentencing Act, "violent sexual offense" means:
- (1) criminal sexual penetration in the first degree, as provided in Subsection C of [Section 30-9-11](#) NMSA; or
  - (2) criminal sexual penetration in the second degree, as provided in Subsection D of [Section 30-9-11](#) NMSA

These cross-references in Section 31-18-25(F) are inadvertently incorrect:

- in paragraph (1) the reference should be to Subsection D;
- in paragraph (2) the reference should be to Subsection E; and
- there may also need to be another paragraph that references aggravated CSP as provided for in Subsection C.
- If these cross references are revised, Section 31-18-23(E)(2)(d), NMSA, may provide analogous language for guidance.

## OTHER SUBSTANTIVE ISSUES

The NMCD reports that life sentences are particularly expensive to NMCD because inmates generally need expensive medical care as they age in prison. Further, because inmates serving life sentences sometimes have little motivation to behave in prison, they take more staff time and care to prevent them from harming other prisoners and staff or causing disruptions.

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

If HB 128 is not enacted, the “intent to kill or with a depraved mind regardless of human life” requirement contained in the aggravated CSP statute will continue to apply.

ABS/lj