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FISCAL IMPACT REPORT

SPONSOR: MP Garcia DATE TYPED: 02/25/01 HB 500/aHJC
SHORT TITLE: Victim's Present at Offender's Parole Hearing SB _____
ANALYST: Trujillo

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
			\$ 235.8	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files
Attorney General (AG)
Corrections Department (CD)
Children Youth and Families department (CYFD)
NM Public Defender (NMPD)

No Response
Adult Parole Board

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendments to HB 500 provides upon the request of victims family including child to be present during the parole hearing in public or private.

Synopsis of Original Bill

HB500 proposes a victim impact presentation to the Adult Parole Board (APB) at the time of the parole hearing and mandates that APB shall allow attendance at the hearing by the victim and the victim's family. The impact presentation is optional for the victim and designated members of the victim's family, but it is mandatory for APB to hear the presentation if the opportunity to present is requested.

Significant Issues

According to NMPD, HB500 is likely to have a substantial effect on the nature of parole hearings, changing them to advocacy forums and increasing the need for the mandated presence of legal counsel. By inviting the victim to speak at a parole hearing after the offender has been remanded to CD, in effect, prolongs a sentencing review. In theory, the victim or the victim's family has already had a chance to testify in front of the Judge, and, perhaps, even rendered a Victim's Impact Statement to be considered at sentencing. Inviting the victim to testify again and again at parole hearings almost certainly turns the hearing into an adversarial proceeding. The Parole Hearing becomes a quasi-judicial hearing under which due process requires the presence of counsel. The Offender, or more accurately, the "defendant", suddenly is in a forum where he is not being judged by the merits of what he has done *since* his punishment to rehabilitate and to function lawfully in society, but rather what he may or may not have done at the time the crime was committed. It is almost classic Double Jeopardy. Without any mechanism to insure the victim can be cross-examined, the NMPD will be compelled to provide an attorney to represent the offender. Certainly the concerns of every victim are legitimate but the forum for airing those concerns are at sentencing and not at a Parole Hearing. The costs to protect the constitutional right of due process at parole hearings are significant. Not only would NMPD have to maintain files long after the trial, but Public Defenders would have to travel the state for parole hearing representation.

The AG reports the "Victims of Crime Act" specifies that a victim shall be given the opportunity to be heard at post-sentencing hearings. The proposed legislation effectuates a right granted to crime victims in the "Victims of Crime Act" but not yet procedurally implemented.

CD reports the only issue of significance to CD is the possible increase in the administrative burden on Department prison personnel who are required to search, clear and escort/supervise the victim who might come on prison grounds to attend APB hearings. Currently, victims are allowed to meet and speak with the APB members at the main APB, or they are encouraged to make their statements in writing. However, because of time constraints, victims are not allowed to currently attend APB hearings.

FISCAL IMPLICATIONS

NMPD reports the costs to protect the constitutional right of due process at parole hearings are significant. Not only would NMPD have to maintain files long after the trial, but NMPD would have to travel the state for parole hearing representation. NMPD estimates it would need a paralegal plus two PD IIIs for hearings and one PD III attorney assets at appellate to assist with appeal and /or post conviction proceedings. Travel and other investigation costs need to be included in the amount of \$15.0. Total estimated cost for NMPD is \$235.8.

ADMINISTRATIVE IMPLICATIONS

CD reports if HB500 results in a larger number of victims who attend APB hearings, it would increase the administrative burden upon prison personnel who are required to search, clear, and supervise/escort those visitors who wish to come on prison grounds to attend APB hearings. However, since victims are currently not prohibited from attending parole hearings or making a statement to APB, HB500 may not result in an increase in victims who attend parole hearings.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

The AG reports this legislation complements the protections for victims provided in the New Mexico Constitution Article II, Section 24 and the "Victims of Crime Act" found at 31-26-1 through 31-26-

14 NMSA 1978. However, the protections found there are limited to certain crimes and the proposed legislation contains no such limitations.

TECHNICAL ISSUES

The AG reports the legislation is limited to the Adult Parole Board and by its terms excludes Juvenile Parole Board hearings.

“Family member of the victim” definitions do not list “child”, “grandparent” or “domestic partner”.

OTHER SUBSTANTIVE ISSUES

The New Mexico Supreme Court has recently analyzed the content of victim impact testimony in the penalty phase of capital prosecutions. State v. Shawn Jacobs, 129 NM 448. The rule of law that emerged from that analysis is that victim impact testimony in that setting must be additional evidence of the harm from the specific crime(s) charged. The case leaves open the question of whether the holding may be extended beyond the parameters of the penalty phase of capital litigation. The proposed legislation does not provide guidance as to what materials may be considered in the context of the APB hearing.

The AG suggests incorporation of guidance concerning victim impact testimony from State v. Shawn Jacobs, 129 NM 448, would clarify the Adult Parole Board’s responsibilities under the proposed bill.

LAT/ar