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FISCAL IMPACT REPORT

SPONSOR: HJC DATE TYPED: 03/05/01 HB 239 et al/HJCS
 SHORT TITLE: Abolish the Death Penalty SB _____
 ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		See Narrative		Recurring	GF/OSF

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB165, HB435, HB438

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender (PD)
 Corrections Department

SUMMARY

Synopsis of HJC Substitute

House Bill 239etal/HJCS repeals portions of capital felony sentencing laws to abolish the death penalty. In each relevant section, the provisions providing for death are replaced with provisions allowing for life imprisonment without possibility of release or parole. This bill also specifies that an inmate sentenced to life imprisonment without possibility of release or parole, resulting from commission of a capital felony, shall remain incarcerated for the entirety of that person’s natural life.

Additionally, all aggravating circumstances provisions that would support punishment of life imprisonment without release or parole by are amended to require a “deliberate intent to kill” as opposed to simply an “intent to kill.”

This bill also amends Section 31-20A-5 NMSA relating to the types of aggravated circumstances to be considered by the judge or jury in sentencing someone found guilty of a capital offense. The added provisions constituting "aggravated circumstances" are outlined below:

1. the victim was a child under the age of thirteen;
2. when the defendant murders two or more people in a single incident; or

3. the victim was a peace officer or correctional officer who was murdered because of that person's present or former status as a peace officer.

The amendment also cleans up some other technical language in the statute.

FISCAL IMPLICATIONS

Death penalty cases are known for being very high cost cases for the state compared to "life" penalty cases. However, the Department of Corrections reports that the costs to house an inmate for life, in contrast to the death penalty, are significantly higher.

The Administrative Office of the District Attorneys and the Public Defender report that most agencies should experience no fiscal impact since the same procedures that would ordinarily be followed for a death penalty case will also be required for cases in which the possible sentence would be life imprisonment without the possibility of release or parole.

However, the Administrative Office of the Courts reports that as a practical matter, the cost of a death penalty case for jury fees far exceeds the cost of a non-death penalty case due to the increased time and jurors involved. (\$45.0-\$50.0 versus \$7.0-\$8.0 per case.)

While the costs to the Courts, Public Defenders and District Attorneys may ultimately decrease with the repeal of the death penalty, the cost to the Department of Corrections will certainly be greater. The Department of Corrections estimates that the average life sentence served with a possibility of parole is 32-33 years. The average life sentence without a possibility of parole could reasonably be 50 years. Although New Mexico does not have much experience with death penalty cases, the average death penalty sentence served is 5 years during the appeals process before execution. A rough estimate of the yearly cost to the Department of Corrections per inmate is \$27.0. Considering the additional cost of age or medical related expenses, it is clear that the cost of a life sentence without parole could be more than double the cost of a life sentence with the possibility of parole. The cost of a life sentence without parole could be ten times the cost of imposing the death penalty.

The judicial system will spend \$400 for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions.

OTHER SUBSTANTIVE ISSUES

The Department of Corrections is concerned that sentences of life without possibility of parole remove any deterrence against crimes against a corrections officer or another inmate. If an inmate knows they will have no possibility of a greater sentence, they have no incentive to refrain from committing crimes against corrections staff and other inmates.

The Public Defender reports that if this bill is passed and interpreted too broadly, peace officers, former or active, may become protected citizens far beyond that contemplated. Prosecutors could ask for life imprisonment without possibility of release or parole no matter how remote the murder may have been from the official's performance of that person's duty.

LG/ar