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## FISCAL IMPACT REPORT



SPONSOR: Godbey DATE TYPED: 02/06/02 HB 111/aHJC

SHORT TITLE: Conditions of Parole of Sex Offenders SB \_\_\_\_\_

ANALYST: Trujillo

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY02	FY03	FY02	FY03		
		\$0.1 See Narrative		Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received

- Adult Parole Board (APB)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorney’s (AODA)
- Attorney General (AG)
- Corrections Department (CD)

### SUMMARY

#### Synopsis of HJC Amendment

House Judiciary Committee amendments to House Bill 111 changes “the remainder of his natural life” to “not to exceed ten years”.

#### Synopsis of Original Bill

House Bill 111 provides the APB with the authority to require that convicted sex offenders serve a period of parole as deemed necessary by APB, up to a period of the entirety of the sex offender’s natural life; and to require special conditions of parole. Specifically, the bill provides that prior to release on parole of a sex offender, the APB is to conduct a hearing to determine the period of parole and the conditions of parole. The bill sets out several factors that APB should consider in making its determination.

The bill authorizes the Adult Parole Board (APB) to order reasonable conditions of parole, including:

- (a) being subject to intensive supervision by a parole officer;
- (b) participating in outpatient or in-patient sex offender treatment program;
- (c) agreement not to use alcohol or drugs;
- (d) agreement not to have contact with certain persons or classes of persons; and
- (e) being subject to alcohol testing, drug testing, polygraph exams, voice stress analysis or similar examination to determine compliance with the conditions of parole.

APB may order the sex offender to serve any period of parole deemed necessary, up to and including the entirety of the sex offender's natural life.

The bill also provides that APB review the terms and conditions of a sex offender's parole every two (2) years. If the sex offender demonstrates and APB finds that it is no longer necessary to continue the offender on parole or that certain conditions are no longer necessary, APB may amend its order accordingly.

If APB finds a sex offender violated the conditions of parole, APB may revoke parole and return the offender to prison, extend the period of parole or order new conditions. Also, in anticipation of a parole hearing, the chief public defender will be notified to determine if the sex offender requires the assistance of counsel at the hearing.

The bill defines the term "sex offender" as a person who is convicted of, pleads guilty to or pleads *nolo contendere* to any of the following offenses:

- (a) criminal sexual penetration in the first, second or third degree;
- (b) criminal sexual contact of a minor in the third degree
- (c) sexual exploitation of children as defined in subsection B, C, or D of Section 30-6A-3 NMSA 1978.

AOC reports, when making its decision, the board may consider the following relevant factors:

- nature and circumstances of the offense which the sex offender was incarcerated;
- nature and circumstances of a prior sex offense;
- rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere; and
- the danger to the community posed by the sex offender.

The parole board shall review the terms and conditions of a sex offender's parole at two-year intervals. The board shall notify the chief public defender of an upcoming parole hearing for a sex offender, and the chief public defender shall determine if the sex offender requires assistance of counsel.

### Significant Issues

CD indicates research has demonstrated that most sex offenders, unlike other criminal offenders, are likely to continue committing sex offenses throughout their entire lives. While most persons who commit other types of violent crime tend to stop engaging in such behavior as they get older, many sex offenders continue such behavior over their lifetime. Furthermore, research has shown that many sex offenders not only tend to be recidivists, but can commit dozens of sex offenses each year and hundreds throughout their lifetime and are often not caught. Also, they often target children as their victims. This type of recidivism results in the need to give the Parole Board the discretion to determine how long the period of parole should be in each individual case.

Also, research has also demonstrated that the recidivism rate for sex offenders can be successfully reduced by a program of intensive supervision in conjunction with special conditions of parole and polygraph testing and other similar testing to determine whether the sex offender is complying with the conditions of parole. The State of Colorado uses such a program and has experienced great success in reducing recidivism and/or re-offending by sex offenders.

### **FISCAL IMPLICATIONS**

The APB reports no fiscal impact. CD reports the bill could reduce costs to the department (as well as other law enforcement agencies and the courts) in later years if it results in a reduction in recidivism rates for sex offenders, thereby reducing prison population. At the same time, the bill will result in an increase in costs to CD in later years as a result of the larger parole caseloads due to the longer periods of parole. Since the cost of incarceration is much greater than the cost of supervision on parole, the bill could reduce the overall cost to the department in later years.

CD indicates the private prison annual cost of incarcerating an inmate based upon Fiscal Year 01 actual expenditures is \$22,787 per year for males. The cost per client to house a female inmate at the privately operated facility in Grants is \$24,480 per year. Any net increase in inmate population will be housed at a private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,381 per year. The cost per client in Intensive Supervision programs is \$4,785 per year. The cost per client in department-Operated Community Corrections programs is \$5,558 per year. The cost per client in Privately-Operated Community Corrections programs is \$10,746 per year.

CD reports there will also be a minimal increase in revenue in later years from the additional parole supervision fees collected over the longer parole terms.

### **ADMINISTRATIVE IMPLICATIONS**

According to CD, the bill will reduce the administrative burden on prison personnel in later years if recidivism rates for sex offenders are reduced. It will increase the administrative burden on parole officers and support personnel in later years due to the longer parole terms and resulting higher caseloads.

## TECHNICAL ISSUES

According to the AG, the bill does not address the sentencing court's power to set a parole period found at NMSA 1978, § 31-18-15 (C) (1999). The bill specifies that an offender will be on parole for "the entirety of the sex offender's natural life" unless otherwise ordered by the board. As a general rule, "time under a deferred or suspended sentence, or time on parole, is counted in determining whether a sentence has been served." *State v. Lard*, 86 N.M. 71, 519 P.2d 307(1974). For example, the presumptive penalty for third-degree criminal sexual penetration is three years imprisonment. It is uncertain if the parole board can effectively sentence someone to life for a third-degree felony. This may well only become an issue if someone is paroled for "the entirety of [his] natural life" and then that parole is revoked. Theoretically, he might serve a life sentence for a crime carrying a maximum aggravated sentence of 4 ½ years.

- A. The sentencing court's authority in this regard is limited. *State v. Freeman*, 95 N.M. 127, 619 P.2d 572 (1980). It is not certain that the power to order life long parole can be granted to the board without specifically providing that an indeterminate period of parole is a possible punishment for specific offenses under the sentencing code.
- B. The bill refers to Subsection D of NMSA 1978, § 30-6A-3. This subsection does not proscribe an activity. It is a penalty provision.
- C. The bill provides that the public defender department may provide counsel for a parolee, but makes no provisions for who would represent the board or the State's interests in such a hearing.
- D. The bill provides that the public defender department may provide counsel for a parolee, but makes no provisions for who would represent the board or the State's interests in such a hearing.

## OTHER SUBSTANTIVE ISSUES

AODA reports a sex offender is defined as a person who commits criminal sexual penetration in the first, second, or third degree contrary to Section 30-9-11, criminal sexual contact of a minor contrary to Section 30-9-13, and sexual exploitation of children contrary to Subsection B, C, or D, Section 30-6A-3. Subsections A and C, Section 30-6A-4 should be added to the definition of sex offender. Subsection A deals with children being exploited through prostitution and the offender receiving pecuniary profit by the child's actions. Subsection C deals with a person having legal custody of a child knowingly permitting that child to engage in child pornography.

LAT/njw:ar