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FISCAL IMPACT REPORT



SPONSOR: Aragon DATE TYPED: 01/30/02 HB _____

SHORT TITLE: Abolish Death Penalty SB 227

ANALYST: Wilson

APPROPRIATION

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

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Public Defender (PD)
 Corrections Department (CD)

SUMMARY

Synopsis of Bill

SB 227 abolishes the sentence of death as an option when a criminal defendant has been convicted of a capital felony. All persons convicted of a capital felony would be punished by a sentence of life imprisonment (with the possibility of parole in thirty years) or life imprisonment without possibility of release or parole. Similarly, SB 227 repeals those provisions of the existing law that set out the procedure for execution of the death sentence. Also changed are the procedures which set out how the jury or the judge determine whether to sentence a defendant to life imprisonment or life imprisonment without possibility of release or parole as the result of being found guilty of a capital felony. SB 227 also changes the provisions concerning the sentencing of mentally retarded persons, prohibiting the sentence of life imprisonment without possibility of release or parole.

The provisions for reviewing of sentences by the New Mexico Supreme Court remain the same, except that instead of reviewing death sentences, the court automatically reviews sentences of life imprisonment without possibility of parole or release.

SB 227 changes the intent requirements of the aggravating provisions, adding a "deliberation" standard under aggravating circumstances.

The parole procedures are modified with a provision that if an inmate of an institution were sentenced to life imprisonment without possibility of release or parole as a result of a capital felony, they would not be eligible for parole and would serve the sentence for his or her natural life.

SB 227 would be applicable to persons convicted of a capital felony offense that is committed on or after July 1st, 2002. As to persons convicted of capital felony committed prior to July 1, 2002, the laws with respect to capital felony offenses in effect at the time the offense was committed shall apply.

Significant Issues.

The most significant issue to the Corrections Department is that SB 227 will eliminate perhaps the most powerful deterrent that prevents certain inmates from committing capital offences while incarcerated in a Department prison. Specifically, there are some inmates who are serving such lengthy sentences that they have no realistic expectation of ever being released. For these inmates, the most powerful deterrent which keeps them from killing an employee of the Corrections Department or some other inmate is the threat of the death penalty. Under the current capital felony sentencing structure, the killing of a Corrections Department employee or other person while incarcerated in a New Mexico prison or while attempting to escape from a penal institution are aggravating circumstances which justify imposition of the death penalty. If the death penalty is abolished, there will be no effective deterrent to prevent inmates who are serving such lengthy sentences from killing employees of the Corrections Department or other inmates while in prison.

FISCAL IMPLICATIONS

Death penalty cases are known for being very high cost cases for the state compared to "life" penalty cases. However, agencies are concerned that simply repealing the death penalty without changing the procedures for capital cases in which the defendant faces a life sentence will have only a minimal fiscal impact on the state.

The AOC says that repealing the death penalty in New Mexico would save the courts time and money. Death penalty cases take up a considerable amount of court time. Looking at recent death penalty cases shows that they average about three to four weeks; whereas, a non-death penalty murder trial can take an average of six to eight days. The New Mexico Supreme Court would also save time in the number of appeals it would have to review.

Moreover, to assemble a jury for a death penalty case, the Second Judicial District Court will summon as many as one thousand (1,000) people. An estimate of what a death penalty case costs for the jury and witness fee fund is approximately \$35,000-\$50,000. In contrast, a non-death penalty murder case costs approximately \$7,000-\$8,000.

The AOC points out that the life without parole cases will have the same automatic review that a death penalty case presently is accorded under the existing law. Additionally, the severity of the new sentence of life imprisonment without parole may incur court costs similar to death penalty cases.

The PD has provided the following costs for defense of a death penalty case:

Trial Representation	\$	86,000
NM Supreme Court – Appeals Phase	\$	79,000
Habeas Phase - District Court	\$	50,000
Habeas Phase – Appellate Court	\$	40,000
Expert Witness Services	\$	150,000
Administrative Overhead	\$	20,000
Average Cost Per Case Total	\$	425,000

While the costs to the Courts, Public Defenders and District Attorneys may ultimately decrease with the repeal of the death penalty, the Department of Corrections reports their costs to house an inmate for life, in contrast to the death penalty are significant. 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 \$43.5. 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.

ADMINISTRATIVE IMPLICATIONS

The CD states that the increase in costs to the Department would be delayed for a number of years since most persons sentenced to death remain incarcerated in the Corrections Department for several years while their criminal appeals are pending. However, beginning in approximately five to ten years, the Department will begin to experience an increase in costs that will result in having to continue to incarcerate persons who would otherwise have been executed. Therefore, the Department will ultimately be unable to absorb the increase demands on personnel that will result from having to incarcerate inmates who would have otherwise been executed.

A death penalty murder case takes up more court and judge time than a non-death penalty murder case both at the trial and appellate level.

In both the short term and the long term, this bill will make it somewhat more difficult to administer Department prisons with respect to deterring those inmates who are serving extremely long sentences from engaging in 1st degree murder. Also, in the long term, the bill will result in a significant increase in the administrative burden upon Department prison personnel who will be required to administer a somewhat larger prison population having a greater number of inmates with serious health problems due to the greater number of older inmates who will be serving life sentences rather than having been executed

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.)

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