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## FISCAL IMPACT REPORT

SPONSOR Altamirano DATE TYPED 2/01/04 HB \_\_\_\_\_

SHORT TITLE Guadalupe County Prison Felony Prosecutions SB 233

ANALYST Bransford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY04	FY05	FY04	FY05		
	\$828.0			Non-Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 234, SB 275 and HB 255  
Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
Public Defender Department (PDD)  
Attorney General (AG)  
Administrative Office of the Courts (AOC)  
4<sup>th</sup> Judicial District Attorney (DA)  
Corrections Department (CD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 233 appropriates \$828 thousand from the general fund to the fourth judicial district attorney (\$578 thousand) and the attorney general (\$250 thousand) for the purpose of prosecuting the capital felony cases that arose from the riot at the Guadalupe county correctional facility.

#### Significant Issues

Contract attorneys representing the three defendants have a motion pending before recently retired District Judge Frank Allen requesting dismissal from the case because they are not being compensated enough to provide adequate representation. Contract attorneys for the PDD are paid on flat fee schedule. However, both the New Mexico State Bar and the American Bar As-

sociation recommend that attorneys representing capital defendants be compensated on an hourly basis. The cases are expected to proceed to trial within the year. To date a total of \$4.2 million has been spent on the prosecution and defense of these cases (See Attachment).

### **FISCAL IMPLICATIONS**

The appropriation of \$828 thousand contained in this bill is a non-recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.

### **ADMINISTRATIVE IMPLICATIONS**

The attorney general's office points out that capital litigation is the most complex, and time consuming of criminal cases. The cases involve a total of 15 defendants and include over 70,000 pages of discovery. (11 defendants have entered guilty pleas to lesser charges while 3 are pending death penalty trials.) As a result, as each defendant files his motion or makes a request for discovery the State must respond. In practice this results in multiple interviews and overlapping but distinct motions being filed with the trial court. Death penalty cases involve detailed and thorough investigation, discovery and interview processes. In addition expert witnesses and motion practice is more frequent in capital cases.

### **RELATIONSHIP**

This bill relates to SB 275 and HB 255 both of which would create a new fund, the Capital Felony Representation Fund, in the public defender department. It also relates to SB 234 which requests a total appropriation of \$895 thousand for the defense of these cases.

**VB/lg**