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FISCAL IMPACT REPORT

SPONSOR Balderas DATE TYPED 03/11/05 HB 694/aHJC

SHORT TITLE Aggravated Circumstances at Sentencing SB _____

ANALYST Ford

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment specifies that the prohibition on juries considering use of a firearm, prior convictions, or commission of a hate crime in sentencing applies for the purposes of Section 31-18-15.1 NMSA 1978 relating to aggravated circumstances.

Synopsis of Original Bill

House Bill 694 requires that juries, not judges, make findings beyond a reasonable doubt of any aggravating circumstances for purpose of sentence enhancements.

Significant Issues

In 2004, the U.S. Supreme Court ruled in the case of *Blakely v. Washington*, 124 S. Ct. 2531 (2004) that federal sentencing guidelines were unconstitutional. Similar to New Mexico's current guidelines, the federal guidelines allowed judges to make findings of aggravating circum-

stances and did not require proof beyond a reasonable doubt.

House Bill 694 makes amendments to New Mexico's guidelines to bring the law into conformance with the *Blakely* decision.

FISCAL IMPLICATIONS

The bill's fiscal impact will likely be minor. Trials may become slightly longer as it may take more time for factual evidence to be presented to juries in a way that would establish proof beyond a reasonable doubt. NMCD notes that it is difficult to predict how juries' decisions will compare to judges' decisions regarding sentence length. However, it also notes that most sentences are currently not enhanced, so the total impact is likely to be minimal.

TECHNICAL ISSUES

PDD notes a possible technical problem with the bill. The bill refers to the presentation of evidence or statements regarding alleged aggravated circumstances. Under current practices, victim statements are presented to the court without cross examination. However, in order to establish proof beyond a reasonable doubt, statements must be under oath and subject to cross examination. The bill may require clarification to ensure that the sentencing proceedings comply with the *Blakely* decision.

EF/yr