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FISCAL IMPACT REPORT

SPONSOR Moore DATE TYPED 02/23/05 HB 783

SHORT TITLE Sex Offender Treatment & Prior Convictions SB _____

ANALYST Wilson

APPROPRIATION

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

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office for the Courts (AOC)

Attorney General's Office (AGO)

Corrections Department (CD)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 783 amends Section 31-18-17 NMSA 1978 to eliminate the limitation on the use of prior felony convictions when determining whether a person is a habitual offender, if the conviction is for one of a list of specified sexual offenses and DWI offenses from the habitual offender statute.

This bill also provides that, as a condition of probation, the district court shall order a sex offender to participate in an outpatient or inpatient sex offender treatment program.

Significant Issues

The AGO notes requiring mandatory treatment for all sex offenders eliminates the court considering recommendations whether treatment is appropriate for a particular offender. Treatment may not be appropriate for offenders who are in denial and are unwilling to work on treatment issues. Treatment resources may be wasted if treatment is required for all sex offenders.

The CD states the scarcity of sex offender's treatment programs may make it difficult to actually

place a sex offender on probation due to the lack of program space. Quality of treatment in rural areas would be poor, and there is potential that sex offenders may be concentrated in Albuquerque to meet this requirement.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution, and documentation of statutory changes. Any additional fiscal impact on the judiciary will be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CD believes this bill might marginally decrease the amount of time sex offenders spend in prison due to the elimination of prior convictions that may be used to apply a habitual offender enhancement.

ADMINISTRATIVE IMPLICATIONS

Probation Officers may bear the burden of ensuring that the court imposes sex offenders' programming as a condition of probation. Additionally, they may end up competing to acquire a limited amount of treatment spaces for probationers on their caseloads.

OTHER SUBSTANTIVE ISSUES

The PDD provided the following:

The breadth and scope of the sex offenses and the conduct they punish make this extension particularly harsh. These convictions can be used even if the new offense is not sex related. This was not a recommendation of the sentencing commission or the sex offender management board.

Some of the offenses listed are already listed as violent offenses and if a second violent sex offense occurs, the sentence is mandatory life under NMSA 1978, section 31-18-25, or a third violent offense that is not sex related under section 31-18-23. There is no time restriction in these sections on the age of the offense.

The bill's intent in section 31-18-17 D.1.a-j is unclear. A superficial reading of the section seems to eliminate convictions for these offenses altogether as priors rather than eliminating the 10-year limit. It also appears to include felony DWI convictions as available for habitual purposes. While there is currently no time limit on use of prior DWI convictions for subsequent DWI convictions, a DWI felony cannot be used to enhance any other felony conviction. This is because the DWI statutes have their own enhancement provisions.

These convictions never go away even for habitual sentencing purposes even if the person is convicted of a totally different and non-sexual offense such as shoplifting. Persons with these convictions are being treated differently than persons with other convictions for not apparent reason.

DW/lg