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## FISCAL IMPACT REPORT

SPONSOR Papen DATE TYPED 01/27/04 HB \_\_\_\_\_

SHORT TITLE Sentence for Violent Crimes Against Disabled SB 160

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### APPROPRIATION

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

- LFC Files
- New Mexico Sentencing Commission (NMSC)
- Department of Public Safety (DPS)
- Administrative Office of District Attorneys (AODA)
- Administrative Office of the Courts (AOC)
- NM Corrections Department (NMCD)
- NM Public Defender (NMPD)

### SUMMARY

#### Synopsis of Bill

House Bill 160 bill adds a new section to the Criminal Sentencing Act §31-18-12 NMSA 1978, requires that an offender, who is convicted of a non-capital felony who intentionally injures a person sixty-five years of age or who is disabled, shall have their sentence enhanced as follows: by one year if the injury inflicted does not on cause death or great bodily harm, or by two years if the injury inflicted causes great bodily harm or is done with a deadly weapon that could have inflicted death or great bodily harm. The proposed enhancement would be served concurrently with any other sentence enhancement in the Criminal Sentencing Act.

If a jury hears the case, a special interrogatory would have to be submitted to the jury for them to make a finding that the elements of this enhancement exist. If the court tries the case, the court would have to make a separate finding of fact on the issue.

“Disabled” is defined in the bill as a physical or mental impairment or condition that substantially limits one or more of that person’s functions, such as understanding, care for the self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning or working.

Significant Issues

According to the New Mexico Sentencing Commission, during the 2003 legislative session, the legislature repealed Section 31-18-16.1 NMSA 1978, which had set forth language that was identical to the language in proposed Senate Bill 160 (enhancement of a basic sentence for commission of a non-capital felony against a person sixty-five years of age or older or a person who is disabled). During that same legislative session, the legislature also enacted the Hate Crimes Act (Sections 31-18B-1 through 31-18B-5 NMSA 1978) which includes language providing for enhancement of a basic sentence upon a finding that a non-capital felony was motivated by hate.

The Administrative Office of the Courts asserts that, because the proposed bill increases the penalty for a violent felony against an elderly or disabled person and provides that the jury or judge must make a specific finding based on the evidence that there has been violent felony committed against an elderly or disabled person, the bill complies with U. S. Supreme Court in *Blakely v. Washington* requirements.

The Corrections Department points out that this act mandates enhancement be served concurrently with any other enhancement on the basic sentence, meaning that if an offender receives a habitual offender enhancement and an additional enhancement under this act, the enhancements would be served concurrently.

The New Mexico Sentencing Commission relates that the proposed SB 160 and the former Section 31-18-16.1 NMSA provide for mandatory enhancement of a basic sentence should the victim be 65 year of age or older. The currently standing Hate Crimes Act provides for discretionary enhancement of a basic sentence should a crime be determined to be “motivated by hate” which means “the commission of a crime with the intent to commit the crime because of the actual or perceived.....age, handicapped status.....of the victim.....”

The Hate Crimes Act provides for the discretionary enhancement of a basic sentence should the crime be demonstrated to be motivated by hate due to a victim’s particular “status,” such as a victim’s age; The proposed SB160 does not stipulate that a crime be motivated by hate in order to increase an offender’s sentence.

**PERFORMANCE IMPLICATIONS**

The Office of the Public Defender reports that any mandatory provision that increases the sentence makes entering into a plea bargain more difficult.

**FISCAL IMPLICATIONS**

The Administrative Office of the Courts reports minimal administrative cost for statewide update, distribution, and documentation of statutory changes would result from enacting Senate Bill 160 and that any additional fiscal impact on the judiciary would 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.

Because SB 160 provides for a mandatory sentencing enhancement, and the Hate Crimes Act provides for a discretionary sentencing enhancement, it is possible that enactment of SB 160 will result in more enhancements of basic sentences for crimes committed against the elderly or disabled which would result in greater costs to the Corrections Department.

### **ADMINISTRATIVE IMPLICATIONS**

The Administrative Office of the Courts reports that, in order to implement this bill, the courts will need to create a "Uniform Jury Instruction" that would serve as the special interrogatory for the jury. The Office also relates that the legislation could lengthen trials as answering the special interrogatory, and presenting evidence of victim's age or disability and the seriousness of the injury could lengthen the deliberation process.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Depending on the desired outcome of SB160, existing statutory provisions within the Hate Crimes Act (Subsections A, C and D of Section 31-18B-2 NMSA 1978) which has references to "age" and "handicapped status" should be revisited. If SB160 does pass, both the Hate Crimes Act and the proposed statute would stand. Potentially, an offender could have a sentence enhanced both through the mandatory enhancement required in proposed SB160 and through discretionary enhancement provided for in the Hate Crimes Act should a crime be found to be motivated by hate.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Should Senate Bill 160 not be enacted, the sentence enhancements for non-capital felonies against an elderly person or a person with a handicap will remain in the Hate Crimes Act. These enhancements are discretionary and are applicable not for all non-capital felonies committed against individuals who are handicapped or of age above 65, but for those crimes in which the court has determined the crime was motivated by hate for a particular victim's status as being handicapped or over the age of 60.

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