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## FISCAL IMPACT REPORT

SPONSOR Foley ORIGINAL DATE 2/17/07  
LAST UPDATED \_\_\_\_\_ HB 773/aHCPAC  
SHORT TITLE Death Sentences for Certain Sex Offenders SB \_\_\_\_\_  
ANALYST Wilson

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		\$0.1	\$0.1	\$0.1	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 520, HB 663, SB 468 and SB 735.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

Corrections Department (CD)

### SUMMARY

#### Synopsis of HCPAC Amendment

The House Consumer & Public Affairs Committee amendment removes the alternative of imposing the sentence of death after a second violent sexual offence.

#### Synopsis of Original Bill

House Bill 773 imposes a sentence of either life without the possibility of parole or death for conviction of a second violent sexual offense. It sets forth the sentencing procedure and lists various aggravating and mitigating factors to be considered by the sentencing jury or sentencing judge. It also makes for an automatic appeal to the supreme court upon imposition of the sentence. Under the bill, a conviction for a second violent sexual offense will automatically result in a sentence of life without the possibility of parole unless the death penalty is imposed.

### 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, required proceedings under the law, and challenges to the law. 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.

As penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, court room availability and jury fees.

The CD notes that because of the limited number of violent sex offenses as defined in the bill and because victim of both crimes would have to be under age thirteen, it seems unlikely that this bill will result in a large number of offenders sentenced to life with no possibility of parole or to death. However, even a few more convictions for a life sentence with no possibility of parole means that a person could be in the CD's custody for 40, 50 or 60 or more years. Ultimately, even a few more convictions per year for a life sentence will at some point increase the CD's prison population by a minimal to moderate and ultimately to a substantial degree. There is no appropriation in the bill to cover any of these increased costs.

**SIGNIFICANT ISSUES:**

The AODA provided the following:

New language, a new sub-section D, for section 31-18-26 is proposed. The new language states that “. . . In the sentencing proceeding, all evidence admitted at the trial shall be considered and additional evidence may be presented as to the circumstances of the crime and as to any mitigating circumstances pursuant to section 5 of this 2007 act.”

There is similar language in the present Capital Felony Sentencing Procedure statute, section 31-20A-1. However in 31-20A-1 the language states that “In the sentencing proceeding, all evidence admitted at the trial shall be considered and additional evidence may be presented as to the circumstances of the crime and as to any aggravating or mitigating circumstances pursuant to Section 6 of this act.” The words “aggravating or” are absent from the proposed language in this bill. This may or may not have been intentional.

The present Capital Felony Sentencing Act, in section 31-20A-5, already lists seven aggravating circumstances that could invoke the death penalty if proved to exist in a first degree murder case. The aggravating circumstances in the present bill could be incorporated into that existing statute as separate aggravators for seeking life without parole or death in a second violent sexual offense prosecution.

The new section 4 of the bill lists the aggravating circumstances to be considered. Sub-section D states “the victim of the crime was less than ten years of age at the time of the offense.” Does this mean that if the victim is ten, eleven or twelve years old, these sentencing options could apply only if at least one of the first three aggravators is present?

## CONFLICT

Conflicts with:

HB 520, Life Imprisonment with No Parole

SB 468, No Parole for Life Imprisonment

HB 663 & SB 735, Child Solicitation by Electronic Device

## OTHER SUBSTANTIVE ISSUES

The AOC noted that Louisiana passed a law in 1995 making two-time violent offenders who assault children eligible for the death penalty and several other states did so in 2006, but the death penalty traditionally has been reserved for homicides in New Mexico and elsewhere. In 1977, in *Coker v. Georgia*, the U.S. Supreme Court ruled that execution for the crime of rape is "grossly disproportionate ... and is therefore forbidden." That case involved an adult victim, and some death penalty proponents hope the court might approve of capital punishment in cases of repeat violent sexual offenders who assault children. There may be a constitutional challenge to HB 773's imposition of the death penalty as constituting cruel, unusual and disproportionate punishment in violation of the Eighth Amendment to the U.S. Constitution.

## POSSIBLE QUESTIONS

The AODA posed the following questions:

The new section 5 of the bill deals with mitigating factors:

Sub-section B lists as a mitigator "the defendant's capacity to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of the law was impaired".. What if the impairment is the result of voluntary intoxication or the consumption of illegal drugs? Will that still constitute a mitigating factor?

Sub-section C lists as a mitigator "the defendant was under the influence of mental or emotional disturbance". These two terms are not defined. Is being merely "upset" such a mitigating factor?

DW/nt