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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/14/07

SPONSOR McSorley LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Lifetime Sex Offender Parole Supervision SB 932

ANALYST Peery-Galon

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

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NA	Unknown	Unknown	Unknown	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 New Mexico Corrections Department (NMCD)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)

#### No Response Received From

New Mexico Sentencing Commission

### SUMMARY

#### Synopsis of Bill

Senate Bill 932 amends Section 31-21-10.1 NMSA 1978 to provide for the possibility of lifetime parole for persons convicted of the following sex offenses: criminal sexual penetration in the first or second degree, criminal sexual contact of a minor in the second or third degree, and sexual exploitation of children by prostitution in the first or second degree. The amendments provides for a period of parole from five to 20 years for the following sex offenses: kidnapping when committed with intent to inflict a sexual offense upon the victim, criminal sexual penetration in the third degree, criminal sexual contact of a minor in the fourth degree, and sexual exploitation of children in the second degree. The proposed legislation provides for parole board review of the duration of the sex offender's supervised parole every two and one-half years following the initial review following the initial five years of supervised parole. The Attorney General is to bear the burden of proving by a preponderance of the evidence that the sex offender should remain on parole. SB 932 also adds criminal sexual contact of a minor in the fourth degree to the definition of "sex offender" for the purpose of determining period, terms and conditions of parole.

## **FISCAL IMPLICATIONS**

AOC states there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. AOC reports any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and appeals from convictions.

NMCD reports the proposed legislation will have a minimal to moderate effect on the probation and parole caseloads. NMCD states it is difficult to determine just how many offenders will be on life-time parole, especially since the attorney general must prove that the parole should continue. The annual cost of incarcerating an inmate is \$23,867 per year for males and \$21,651 per year for females. The cost per client in probation and parole for a standard supervision program is \$1,467 per year, for an intensive supervision program is \$3,383 per year, for a NMCD community corrections program is \$3,503 per year, for a privately-owned community corrections program is \$7,917 per year, and for male and female residential community corrections program is \$39,401 per year.

AGO states it is unclear the number of hearing per year and the amount of effort required by the office. AGO reports additional costs will include travel throughout New Mexico due to the hearings being in the judicial district where the parole provision was imposed pursuant to the judgment and sentence or in the judicial district where the parolee resides.

## **SIGNIFICANT ISSUES**

AOC reports that as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. Also, AOC notes the proposed legislation lowers the standard of proof required for the Attorney General to prove that a sex offender should remain on parole from a “reasonable certainty” to a “preponderance of the evidence” standard.

AODA states the proposed legislation gives discretion to the courts. One person convicted of criminal sexual penetration in the first degree may receive five years of parole while another person may receive a lifetime of parole.

The language of the proposed legislation puts the burden on the Attorney General in proving that a sex offender should remain on parole. NMCD states this clarification is helpful due to the department’s position that it is a conflict of interest for NMCD to supervise sex offenders on parole and also be responsible for proving that the sex offender should remain on parole.

AGO states it is unclear why a period of two and one-half years is necessary period of review. AGO notes it might be more reasonable to have a period of every five years, especially if the potential for hearings for the lifetime parole are contemplated.

## **PERFORMANCE IMPLICATIONS**

AOC states the proposed legislation may have an impact on performance measures pertaining to cases disposed of as a percent of cases filed and percent change in case filings by case type.

## **ADMINISTRATIVE IMPLICATIONS**

AOC notes new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts requiring additional resources.

NMCD states there may be a need to hire additional probation and parole officers if numerous sex offenders have to serve life time paroles.

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

The proposed legislation has relationships with Senate Bill 439, Senate Bill 528, Senate Bill 735, House Bill 578, House Bill 63 and House Bill 918.

PDD states it appears the proposed legislation has some conflicting language. Senate Bill 932 amends Section 21-21-10.1 (A) (1) NMSA 1978 to provide that certain sex offenders would be on parole for between five and 20 years, the maximum being 20 years. Also, Senate Bill 932 amends Section 21-21-10.1 (C) NMSA 1978 to require that a sex offender reappear before a parole board every two and one-half years, regardless of whether the maximum end date of supervision has passed. PDD states it is the reviewers understanding that according to the proposed legislation, a sex offender who was past the 20 year maximum period of parole would still have to appear before a parole board every two and one-half years.

## **OTHER SUBSTANTIVE ISSUES**

AGO notes the Sex Offender Management Board has not completed a risk and needs assessment for sex offenders. The proposed legislation indicates that the parole board will determine the terms and conditions of supervised parole with this type of assessment available.

## **ALTERNATIVES**

AGO states instead of their office, the district attorneys should be charged with the duty and responsibility to attend any hearing regarding the review of supervised parole conditions or counsel from the Probation and Parole Division of the Corrections Department.

## **AMENDMENTS**

AODA suggests the proposed legislation have a longer minimum period of parole for first and second degree offenses, such as a minimum of 20 years, or amending the proposed legislation to limit the court's discretion.

AGO states it is unclear whether the proposed legislation applies to current sex offenders who would qualify for supervised parole or for crimes committed after the effective date of the legislation. AGO reports the legislative intent should be clear to avoid challenges to the applicability and meaning of the law.

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