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FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 02/27/09
LAST UPDATED _____ HM 25
SHORT TITLE Study "Vulnerable Victim" Law SB _____
ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		None				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
New Mexico Sentencing Commission (NMSC)
Public Defender Department (PDD)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Memorial 25 requires the Courts, Corrections and Justice Committee to examine whether to recommend including a vulnerable victim aggravator in New Mexico law for crimes against certain persons. The recommendations shall be included on the agenda for the second session of the forty-ninth legislature in January 2010.

The committee will take testimony on defining "vulnerable victim" for New Mexico, on court supports available for such victims and on the consequences of adding an aggravator for those who prey on vulnerable victims.

Copies of the memorial shall be transmitted to the co-chairs of the interim legislative courts, corrections and justice committee, the co-chairs of the New Mexico legislative council, the attorney general and the chief public defender.

FISCAL IMPLICATIONS

Since the memorial only requests the Courts, Corrections and Justice Committee to take testimony on the subject it is unlikely appreciable expense would be incurred and if so it would be at the discretion of the committee.

SIGNIFICANT ISSUES

The NMSC comments that the Hate Crimes Act (See Sections 31-18B-1 through 31-18B-5 NMSA 1978) provides sentencing enhancements when an offender commits a noncapital felony with the intent to commit the crime because of the actual or perceived race, religion, color, national origin, ancestry, age, handicapped status, gender, sexual orientation or gender identity of the victim.

Also, HB 208 (2009) proposes to amend Section 31-18-15.1 NMSA 1978 to provide a constitutional process for determination of aggravating circumstances as the basis for increasing a basic sentence.

Due to factors such as age, gender, and location, some groups of individuals are more attractive targets for criminals.

The PDD adds that the status of the victim as “vulnerable” however that is ultimately defined, would need to be proven by the State to the jury by the standard of that of beyond a reasonable doubt. Any fact which increases a sentence must be so proven in accord with the Sixth Amendment to the United States Constitution, as indicated in *State v. Frawley*, 2007-NMSC-057, 143 N.M. 7, 172 P.3d 144.

The AODA offers it would be desirable for the committee to take testimony from other state’s representatives, and the federal government, which have implemented the “vulnerable victim” enhancement and to assess what legal issues they have had to overcome in implementing the enhancement

MW/mt