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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/09
 LAST UPDATED 02/18/09 **HB** _____

SPONSOR Ryan

SHORT TITLE Additional Violent Felonies for Sentencing **SB** 78

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY09 | FY10 | | |
| | None | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB702

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY09 | FY10 | FY11 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|-------|-------|----------------------|-------------------------|------------------|
| Total | | \$0.1 | \$0.1 | \$0.1 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General's Office (AG)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)
- Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 78 would expand the category of crimes requiring mandatory life sentences under what is commonly known as the "three strikes" provision of existing law found at NMSA 1978, § 31-18-23.

This bill adds voluntary manslaughter, third-degree aggravated battery, second- or third-degree shooting at an occupied building, second- or third-degree shooting at or from a motor vehicle, third-degree aggravated battery on a household member, first-degree kidnapping, first- or second-degree aggravated CSP, second- or third-degree CSCM, first- or second-degree robbery, second-degree aggravated arson, aggravated battery on a peace officer, assault with intent to commit a violent felony on a peace officer, and third-degree aggravated battery on a peace officer.

FISCAL IMPLICATIONS

Life imprisonment cases, as explained by AOC, take up a considerable amount of judicial time. Expanding the list of violent felonies for a “three strikes” case may increase the amount of work that needs to be done by the courts, thus requiring additional resources to handle the increased workload. 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. These additional costs are not capable of quantification.

The Corrections Department relates that a possible rise in its costs could occur if the bill were to add to its inmate population.

SIGNIFICANT ISSUES

According to the Attorney General’s Office, Subsection E codifies case law found in *State v. Linam*, 93 N.M. 307 (1979), requiring a conviction/sentence sequence for each felony offense. This may, however, be in conflict with the existing language in Subsection A (“each violent felony is part of a separate transaction or occurrence”). It is unclear whether these provisions need to be harmonized.

Moreover and related to *Linam*, the District Attorneys point out that the bill requires commission of crime and conviction for that crime prior to being able to use commission of a second crime. This conviction/sentence sequence or “*Linam*” sequence, which came out of a New Mexico habitual offender case not constitutionally required. Requiring the *Linam* sequence, as this bill does, is a great detriment to holding felony offenders accountable, as convictions often are delayed due to delays in getting a case to court, especially where the defense has a great deal to risk. Motions, trial prep, etc. can mean a violent offender out on bail (or in custody) who commits another crime escapes the more serious punishment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates HB702

TECHNICAL ISSUES

New Mexico Sentencing Commission notes that on page 2, lines 19-22 provide that: “[i]n order to enhance a defendant’s sentence pursuant to this section, each violent felony must have been committed after the defendant’s conviction for the preceding violent felony.” If each “violent felony” must be committed after a conviction for the preceding “violent felony”, then the requirement appears circular. Criminal laws are narrowly construed. Thus, to avoid confusion, would it be helpful to change “each violent felony” to “a second or subsequent violent felony”.

ALTERNATIVES

The district attorneys suggest removing the Linam language at p. 2, lines 19-22 and add attempted first and second degree murder to the list of violent crimes.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Criminal justice records indicate that the current “three strikes” law is seldom utilized. This amendment would increase the potential application of the law. Failure to enact this measure would likely continue the status quo.

EO/mt:svb