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FISCAL IMPACT REPORT

SPONSOR McSorley ORIGINAL DATE 3/1/15
LAST UPDATED _____ HB _____
SHORT TITLE Eliminate Some Mandatory Minimum Sentences SB 634
ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Narrative					

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 215 and SB 254 (also amending Section 17-2-10 NMSA 1978).

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Department of Game and Fish (DGF)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 634 proposes to amend Section 17-2-10 NMSA 1978 giving sentencing judges the discretion to suspend the imposition of jail or prison time that, under existing law, 90 days is mandatory in every case and removes the notwithstanding language.

The bill proposes to amend Section 30-9-11 and 30-9-13 removing the notwithstanding language and removes the mandatory minimum sentence.

Finally, the bill also adds a new section giving judicial discretion regarding sentencing

FISCAL IMPLICATIONS

According to AOC, as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury, requiring additional judge time, courtroom staff time, courtroom availability and jury fees. It would seem to follow that as penalties become *less* severe, or

potentially less severe, defendants may choose to not invoke their right to trial and their right to trial by jury. However, as noted below, defendants, faced with the possibility of being sentenced to less than life imprisonment or life imprisonment without parole, or less than statutory habitual offender sentence enhancements, may not only choose to invoke their right to trial and their right to trial by jury, but may be inspired to present additional evidence to support a sentence reduction, requiring additional court resources and fees.

SIGNIFICANT ISSUES

AOC reports that life imprisonment cases take up a considerable amount of judicial time. The SB 634 amendments do not remove the possibility of life imprisonment or life imprisonment without parole, but rather provide the court with discretion in imposing a sentence of life imprisonment or life imprisonment without parole. The elimination of *mandatory* sentences of life imprisonment, replaced with the *possibility* of sentences of life imprisonment, may actually inspire defendants to retain attorneys and demand jury trials, to present additional evidence that may influence a court's findings and the court's departure from the sentence imposed pursuant to the Criminal Sentencing Act or other law. Likewise, defendants faced with being sentenced to less than statutory habitual offender sentence enhancements may not only choose to invoke their right to trial and their right to trial by jury, but may be inspired to present additional evidence to support a sentence reduction, requiring additional court resources and fees.

The PDD opines that the reintroduction of sentencing discretion in certain criminal cases may or may not have a significant effect on sentencing outcomes. The possible effects are difficult to assess, because most criminal cases are resolved by plea negotiations, where the parties tend to hammer out a predetermined sentence. The most obvious effect the bill would have would be on jury trials resulting in convictions of certain crimes. In those cases (which are presently few), judges would have real discretion to exercise. Here, the bill might reduce overall incarceration rates by some small amount, assuming that judges would sometimes choose to exercise discretion to impose sentences less than the currently-mandated minimum.

AOC cites the National Conference of State Legislatures, in a July 2013 report, "*Trends in Sentencing and Corrections, State Legislation,*" pp. 4 and 5, noted

Georgia is among at least 15 states that have relaxed mandatory minimum sentences since 2009. Legislation in at least 10 of those states eliminated mandatory prison terms or permitted discretion for some low-level or first-time drug offenders. In 2009, Rhode Island removed mandatory minimum terms for manufacturing or selling drugs. A 2010 South Carolina law eliminated mandatory minimum sentences for first, second and some third drug possession convictions.

At least seven states in recent years have adjusted mandatory penalties for certain repeat offenders. In Massachusetts, for example, lawmakers in 2012 reduced the mandatory prison term for repeat drug manufacturing and trafficking crimes. At the same time, a new class of habitual offenders was created; a mandatory sentence applies to those who have been convicted of the most serious crimes on three separate occasions. These policies seek to balance the need to protect the public from dangerous offenders with other, more cost-effective sentencing policies for some lower-risk offenders.

PERFORMANCE IMPLICATIONS

This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT

Conflicts with SB 215 and SB 254 (also amending Section 17-2-10 NMSA 1978).

ABS/aml/je