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## FISCAL IMPACT REPORT

SPONSOR O'Neill ORIGINAL DATE 1/30/2017  
 LAST UPDATED 3/16/2017 HB \_\_\_\_\_

SHORT TITLE Parole Board Procedures SB 216/aSJC/aHSIVC

ANALYST Rogers

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		No Significant Impact				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (AGO)

Adult Parole Board (APB)

New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of HSIVC Amendment

The House State Government, Indian and Veterans' Affairs Committee (HSIVC) amendment to Senate Bill 216 removes language stricken on page 2, lines 19 – 20. As a result, the Parole Board shall consider information about an inmate when making decisions, now including whether the inmate is able and willing to fulfill the obligations of a law abiding citizen.

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 216 adds an applicability section to the bill requiring the bill's provisions apply only to those persons incarcerated on or after the effective date of the bill.

#### Synopsis of Bill

This bill proposes to change the procedures of the Parole Board when granting or denying parole to an inmate that has been convicted of a crime that is punishable by life imprisonment with the possibility of parole and that inmate has served 30 years in the New Mexico Corrections

Department and is eligible for parole.

Senate Bill 216 appears to change the presumption of parole by removing the requirement for a hearing. Currently, the Board has discretion when denying parole to an inmate serving a life sentence. Senate Bill 216 removes the language of “eligible for a parole hearing” and changes it to “shall be paroled.” Senate Bill 216 also reduces what the board considers when granting or denying parole to an inmate. Currently, the Board should consider five factors when granting or denying parole. Senate Bill 216 reduces the number of factors of consideration to one. Senate Bill 216 also completely removes the finding that the Board must determine that paroling the inmate is in the best interest of society and the inmate.

### **FISCAL IMPLICATIONS**

The APB explains there will be no significant fiscal impact to the board as parole hearings will still be conducted. However, there may be a need for transitional housing or other needs that are outside the budget authority of the board.

### **SIGNIFICANT ISSUES**

In response to the SJC amendment, APB states the following:

“If the effective date of July 1, 2017 includes inmates currently incarcerated this would impact 40 inmates sentences to life that would essentially be released on parole supervision. For these cases, under current statute criteria, the board was unable to make a finding that parole is in the best interest of society (public safety) and that the inmate is willing to fulfill the obligations of a law abiding citizen. These are very high profile cases wherein media is interested. In addition, surviving victims family travel great distances to make victim impact statements to the board with safety concerns. Several are high profile cases in which a police officer lost his life in line of duty and in some of these sensitive cases the board receives 500 letters each hearing in protest of parole. Some of these inmates have never participated in treatment while others have. One of the first lifers ever paroled returned on revocation status after he had not participated in treatment and quickly decompensated to life on parole and he ended up making extreme threats and involved a SWAT standoff to take him into custody. To better equip inmates to society after 30 years, a mandatory reentry may be beneficial.”

The Parole Board states the bill eliminates all current statute criteria with the exception of a mental examinations of the inmate. Mental examinations are restricted under HIPPA and the board does not currently have access to the results. The proposal does not contemplate if an offender sentenced to life is paroled after the 30 years and violates parole; no procedure or timelines for such events are outlined.

According to the AGO, SB 216, as drafted, might be considered unconstitutional. Article 2, Section 24 of the Constitution of the State of New Mexico gives the victims’ of crimes certain rights. One such right as stated by Article 2, Section 24, Subsection (A)(7) is the right to make a statement at sentencing and any post-sentencing hearing. SB 216, as drafted, removes the initial parole hearing altogether and thereby could potentially deprive the victims and survivors of murder and criminal sexual penetration of their constitutional right to be heard.

The AGO also states SB 216, as drafted, also could be seen as contradictory. Subsection (A)(2) states that the Parole Board is to consider all pertinent information regarding the inmate, but then directly states that the only thing the board can consider is a mental examination of the inmate while the inmate was held at the institution. There is the possibility that by limiting what information the Parole Board may consider when whether deciding to grant or deny parole, the Parole Board may not be making the most informed decision and therefore the wrong decision.

NMSC states the following crimes are punished by life imprisonment:

- Murder in the first degree, when there is not a finding of one or more aggravating circumstances (See Sections 30-2-1 and 31-20A-2 NMSA 1978)
- Intentional abuse of a child less than twelve years of age that results in the death of the child (Section 30-6-1 NMSA 1978)
- Aggravated criminal sexual penetration (See Section 30-9-11 NMSA 1978)
- Three violent felony convictions (See Section 31-18-23 NMSA 1978)
- Two violent sexual sex offense convictions (See 31-18-25 NMSA 1978)

TR/jle