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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 02/17/09  
**LAST UPDATED** 03/13/09    **HB** \_\_\_\_\_

**SPONSOR** Garcia, MJ

**SHORT TITLE** Sex Offender Registration & Human Trafficking    **SB** 502/aSPAC/aSJC

**ANALYST** Weber

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

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		Minimal	Minimal	Minimal	Recurring	General

(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)  
 Attorney General (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)  
 Public Education Department (PED)  
 Higher Education Department (HED)  
 Bernalillo County Metro Court (BCMC)

### SUMMARY

#### Synopsis of Senate Judiciary Committee Amendment of Senate Bill 502

1. Strike Senate Public Affairs Amendments 5, 6 and 7.
2. On page 5, line 5, after the comma, insert "for a sexual purpose".
3. On page 5, line 15, strike "(15)" and insert in lieu thereof "(14)".
4. On page 5, line 18, strike "(13)" and insert in lieu thereof "(12)".
5. On page 6, line 25, strike "arrested or".
6. On page 7, line 5, after "devices", insert ", only for law enforcement purposes".
7. On page 8, line 23, strike "arrested or".
8. On page 9, line 3, after "devices", insert ", only for law enforcement purposes".
9. On page 16, line 20, after the comma, insert "for a sexual purpose".
10. On page 17, strike lines 23 and 24 in their entirety and insert in lieu thereof: (8) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;".

11. On page 18, line 7, strike "Paragraphs (1) through (10) of" and on line 8, before the comma, insert "or Subsection D or E of this section".
12. On page 22, lines 5 through 7, strike Paragraph (6) in its entirety.
13. Renumber the succeeding paragraphs accordingly.

The changes are technical in nature for clarity or more precise definition but do not change the substance of the bill.

Synopsis of Senate Public Affairs Committee Amendment of Senate Bill 502

1. On page 5, strike lines 2 and 3 in their entirety. This eliminates “voyeurism” from the changes.
2. Renumber the succeeding paragraphs accordingly.
3. On page 16, line 21, after the semicolon, insert "or" and strike lines 22 through 24 in their entirety. This eliminates “conspiracy to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-2 NMSA 1978”.
4. Renumber the succeeding paragraph accordingly.
5. On page 17, strike lines 23 and 24 in their entirety. This eliminates another reference to voyeurism.
6. Renumber the succeeding paragraphs accordingly.
7. On page 18, lines 7 and 8, strike "Paragraphs (1) through (10) of this subsection" and insert in lieu thereof "Subsection D or E of this section".

Synopsis of Original Bill

Senate Bill 502 defines the term "habitually lives" to mean any place where the sex offender lives for at least thirty days in any three-hundred-sixty-five-day period. The bill also requires registration as a sex offender for a person convicted of a sex offense pursuant to the law of a foreign nation that provides due process similar to that provided in the United States.

SB 502 adds the following offenses to the list of offenses for which a person must register as a sex offender: criminal sexual communication with a child; voyeurism; human trafficking, when the victim is less than sixteen years of age; and conspiracy to commit a sex offense.

SB 502 expands the information that a sex offender must provide when the offender registers with a county sheriff to include:

1. the address of every place where the sex offender habitually lives;
2. the name and address of the sex offender's place of employment;
3. every offense for which the sex offender has been arrested;
4. the date and place of every arrest;
5. the sex offender's names, addresses, monikers or other self-identifiers used in internet communications or postings or on other communication devices;
6. the sex offender's telephone numbers;
7. the sex offender's professional licenses;
8. the license plate or other identifier and the description of any vehicle owned or operated by the sex offender, including aircraft and watercraft;
9. the name and address of any school or institution of higher education that the sex offender is attending; and
10. copies of the sex offender's passport and immigration documents.

SB 502 also provides that a county sheriff obtain a palm print from a sex offender.

SB 502 provides that the internet web site managed by the department of public safety shall provide the following registration information:

1. the sex offender's legal name and any other names or aliases that the sex offender is using or has used;
2. the sex offender's current address and the address of every place where the sex offender habitually lives;
3. the address of the sex offender's place of employment, if the sex offender's employment requires the sex offender to have direct contact with children;
4. every sex offense for which the sex offender has been convicted;
5. the sex offender's professional licenses;
6. the license plate or other identifier and description of any vehicle owned or operated by the sex offender, including aircraft and watercraft;
7. a photograph of the sex offender;
8. a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and
9. the sex offender's date of birth.

Finally, there is an applicability section that provides that the provisions of SB 502 apply to:

1. a person convicted of a sex offense on or after July 1, 2005; and
2. a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation or on parole for commission of that sex offense.

## **FISCAL IMPLICATIONS**

The AODA offers the following regarding the possibility of increased costs associated with the bill.

The expansion of the definition of sex offenders, who must register with the county sheriffs, by the inclusion of persons who have been convicted of sex offenses solely by the law of a foreign nation that provides due process similar to that provided in the United States and by the inclusion of persons who have committed the additional enumerated offenses, classified as sex offenses by this bill, would likely lead to additional prosecutions of sex offenders who willfully and knowingly fail to comply with the registration requirements of the Sex Offender Registration and Notification Act, or who willfully and knowingly provide false information when complying with the registration requirements of said Act. An increase in prosecutions for violations of the Sex Offender and Notification Act would lead to additional expenditures in terms of time and/or money by district attorneys, police agencies, the courts, and the corrections department. Such an increase in based on the assumption that the enactment of this bill will not dissuade sex offenders from moving to New Mexico, will not encourage sex offenders to leave New Mexico, and will not otherwise discourage the commission of sex offenses in New Mexico.

However, even if there were to be an increase in prosecutions of sex offenders, which would likely entail additional expenditures by the criminal justice system, consideration of such increased expenditures must be counterbalanced by consideration of the potential for the increase in public safety for the citizens of New Mexico, especially the children of this State who are

often the victims of these predatory sex offenders. Additionally, consideration must be given to the amount of damage, both financial damage and emotional damage, brought upon victims by sex offenders. It is difficult to put a dollar amount on the financial damage (for example, lost work, disruption to one's life, and expenditures for medical, psychological, and psychiatric care) caused by sex offenders.

There may also be some increase in cost to the Department of Public Safety by increasing the amount of information they must provide to the public.

NMCD adds similar information regarding costs.

SORNA already indicates that it is a felony for a sex offender to willfully or knowingly fails to comply with all registration requirements or to willfully or knowingly provide false registration information. Since it is likely that at least some sex offenders will provide no, incomplete or false registration information regarding the expanded list of required information, the likely result is a minimal to moderate number of new convictions.

These additional felony convictions (fourth degree felonies for first offenses and third degree felonies for subsequent offenses) resulting from this bill will increase the NMCD costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the Department's inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate with certainty the ultimate effect of any bill that is likely to result in additional felony convictions. costs associated with the bill.

## **SIGNIFICANT ISSUES**

The PDD contributes the following:

In addition to representing indigent defendants charged with sex offenses, the PDD also represents indigent defendants who fail to register. Almost everyone charged with this crime is indigent, since finding work as a registered sex offender is extremely difficult. When the registration requirements change from year to year, registrants are more likely to violate the law. Not only is it difficult for the offender to understand the law, it is also difficult for probation officers to explain the law to their supervisee. For example, one proposed change would require people who were convicted of sex crimes in other countries to register as a sex offender while in New Mexico "if the foreign nation provides due process similar to that provided in the United States." How would a probation or parole officer know what kind of due process is available in other counties? How would an officer know what constitutes "similar" due process?

Two other proposed changes might also create confusion. One proposed provision requires registration if the person is in the state for thirty days in any three-hundred and sixty-five day period. Another provision requires students to register within ten days of starting school. This could lead to inadvertent violations. More importantly, how will an offender know when a three-hundred and sixty-five day provision begins? By the time a person looks back over a period of three- hundred and sixty-five day to see if he has been in the state more than thirty days, he has already broken the law.

The proposed amendment requiring the police to gather additional information for law enforcement purposes is consistent with changes in the federal regulations. However, states have greater autonomy in deciding what information to include on the public website. Unanticipated consequences may arise when too much information is disseminated on the world-wide-web. For example, too much information about the registrant can have a devastating impact on many of the victims because their identity is exposed. Not only are they embarrassed in their communities, they are exposed to predatory sex offenders who use the web to target victims.

Secondly, much of the additional information serves no valid public safety purpose and would merely increase the public's level of fear. For example, any individual who had a professional license before being convicted as a sex offender would have lost it by the required registration deadline. Therefore, requiring a person to list professional licenses is unnecessary. Also, registered sex offenders are never allowed to have direct contact with children, let alone work with children. Therefore, requiring a person to list the work place is unnecessary. These unnecessary provisions create unwarranted apprehension and fear in the public because they suggest that such situations are even possible.

There are limited resources available to keep communities safe from reoffending sexual offenders. There are no studies to show that when more extensive registration is required, the community is safer. The Sex Offender Management Board has recognized that strict supervision along with treatment is the most effective way to ensure public safety. The Public Defender Department also believes that well-designed treatment programs are the best way to reduce recidivism and thereby decrease the Department's workload.

The AODA continues with additional information.

By including persons who have been convicted of sex offenses solely under the law of a foreign nation in the definition of sex offenders who must register in New Mexico, this bill makes a salutary change. Given the scope of international commerce and travel, and given the lengths to which sexual predators will go to prey upon victims, especially child victims, closing this "loophole" is an important amendment. It is important that New Mexico not become a travel or immigration destination favored by sexual predators. Including the additional offenses, which most people would consider to be sexual offenses, in the definition of sexual offenses requiring registration will inure to the benefit of public safety in New Mexico by requiring persons who commit such offenses to register. Furthermore, the additional information on sex offenders that would be available to the public on the Department of Public Safety's website will give persons additional information enabling them to take steps to help insure their safety

The NMSC notes the bill was developed by the Department of Public Safety to comply with certain requirements set forth in the federal Adam Walsh Act. During the 2008 interim, the DPS proposal was reviewed, revised and endorsed by the New Mexico Sex Offender Management Board.

The AGO mentions potential conflicts or confusions that may need attention.

This bill does not distinguish 'commercial sexual activity' in human trafficking from other definitions of human trafficking. The crime of human trafficking also criminalizes labor exploitation through force, fraud or coercion which may not be sex related offenses.

As provided in this bill, human trafficking is a sex offense requiring registration only when the victim is less than sixteen years of age. The definition of ‘commercial sexual activity’ means ‘any sexual act or sexually explicit exhibition for which anything of value is given, promised to or received by any person’. This age limitation is inconsistent with the registration requirement for the sex offenses of criminal sexual penetration in the 2<sup>nd</sup> degree, 3rd degree or 4th degree, which includes registration if the crime is committed against an adult.

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