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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 03/09/11 **LAST UPDATED** 03/11/11 **HB** CS/298/aHFI#1/aHFI#2
SHORT TITLE Sex Offender Registration Requirements **SB** _____
ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	\$45.0	\$45.0	\$90.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 352

Conflicts with SB 352 and HB 526

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorney (AODA)
Attorney General's Office (AGO)
Public Defender Department (PDD)
Parole Board (PB)
New Mexico Corrections Department (NMCD)
Department of Public Safety (DPS)

Other Responses

Reform Sex Offender Laws New Mexico (RSOL New Mexico)

Note: The PB, DPS and RSOL New Mexico responses were received on the original bill. Comments from them are included in this analysis of the HJC substitute to the extent they appear to apply to the provisions of this substitute.

SUMMARY

Synopsis of HFL Amendment #2

House Floor Amendment #2 restores the verification period after ten years of continuous compliance with ninety-day verifications to the ninety-day period required in existing law.

TECHNICAL ISSUE

Because this amendment restores the provision governing verification periods to the ninety-day period in current statute, the language in both the title of the bill and in the substantive subsection which referenced and made changes to that time period appear to be no longer necessary (see page 1, line 12, beginning with “PROVIDING” through “VERIFICATIONS” in line 14; and page 13, line 21 through “ninety days” in line 25).

Synopsis of HFL Amendment #1

House Floor Amendment #1 to House Bill 298 revises the title of the bill to reflect the substantive change in the verification period after ten years of continuous compliance with ninety-day verifications from “annual” verification to verification “every six months”.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 298 revises and adds to the Sexual Offender Registration and Notification Act (SORNA). It expands the definition of a sex offender (SO) to include a person convicted of a sex offense in other countries if those convictions meet certain standards. In addition, it adds to the information a SO must provide, including the address of each and every place where the SO habitually lives (at least 30 days in any 365 day period), current information on employment, identifying information the SO uses on social networking sites, telephone numbers, professional licenses, license plate numbers, the name and address of any school or institution of higher education the SO is attending, and copies of passports and immigration documents.

HB 298 reduces the frequency of registration for SOs who are required to register for life from every ninety days to every six months after 10 years of continuous and compliant registration and no subsequent felony or misdemeanor conviction. If a registered SO is incarcerated for more than 10 days, this bill requires the SO to report no later than 5 days after release.

The bill requires DPS send verification forms and reminder notices at least 16 days before an SO must report. The SO must timely return the verification form in person and sign it under oath. If the SO does not receive the verification form, the SO must still report within the time required by law.

HB 298 revises the registration requirement for the crime of fourth degree criminal sexual contact from lifetime registration to ten years. It clarifies that kidnapping and false imprisonment crimes are sex offenses requiring registration only if those crimes are committed with the intent to inflict a sexual offense.

In addition, HB 298 amends sections of the Criminal Code that create the crimes of child solicitation by electronic device and criminal sexual communication with a child to provide a definition of solicitation and to exclude the prior notice provision that is currently a prerequisite to prosecution of these crimes.

The bill also specifically lists and describes what can be included on the DPS SO internet website and requires county sheriffs to obtain palm prints from all registering SOs. It prohibits all political subdivisions of the state from imposing any other restrictions on SOs that are not included in SORNA, and state and local law enforcement agencies from requiring SOs to report or register more frequently or to provide more information than is required by SORNA.

The bill contains an effective date of July 1, 2011.

FISCAL IMPLICATIONS

The table above reflects the DPS's estimated costs, as reported in its analysis of the original bill's requirement (which remains unchanged in this substitute) to mail the required notifications to SOs (based on similar mailings in the past which cost approximately \$8,000-\$10,000) and the assignment of another FTE to assist with tracking SO registration dates, mailing out the letters, and tracking responses and SO compliance.

The DPS also anticipates some fiscal impact on NM Sheriff's Offices as well, given the verification requirements in the bill. Currently the DPS encourages the Sheriff's Offices to verify the addresses and information on SO registration forms, but that activity is not currently mandated by statute or rule.

Similarly, the AODA reports in its analysis of this substitute that:

By adding offenders convicted in other countries to the requirement that they register as sex offenders, it will increase the number of sex offenders that the sheriff departments across the state will have to track. The substantial increase in the amount of information that must be collected by the sheriff's department will also increase their costs. First, new forms will have to be printed. Second, the length of time it takes to collect the information will also increase.

SIGNIFICANT ISSUES

Both the AGO and the PB (as to the original bill) raise an issue concerning the provision limiting kidnapping and false imprisonment as a sex offense only when there is an intent to inflict a sexual offense. The AGO asks:

Must a jury make this finding? Is the finding made at sentencing by a judge? Is it a specific intent? Must there also be a conviction for a sex offense concurrently with the conviction for kidnapping or false imprisonment? This modification may need additional language to avoid any litigation regarding statutory interpretation and the due process rights of the convicted sex offender.

The PB (as to the original bill) proposes an amendment outlined below to address this concern.

Additionally, in its analysis of this substitute, the PDD raises this issue concerning the amendments to the criminal code provisions defining the crimes of child solicitation by electronic device and criminal sexual communication with a child that exempt the prior notice provision in current law:

Absolving the Office of the District Attorney of notice requirements for certain sex offenses against children creates due process and equal protection concerns to defendants in the criminal justice system. U.S. Const. amends. V, XIV; N.M. Const. art. II, § 18.

RELATIONSHIP, CONFLICT

HB 298 relates to SB 352 to the extent it removes the prior notice requirement for the crimes of criminal solicitation by electronic device and criminal sexual communication of a child (but SB 352 does not provide a definition of “solicitation”). HB 298 also conflicts with SB 352 and HB 526 to the extent that each amends SORNA in a manner inconsistent with the provisions of HB 298.

POSSIBLE QUESTIONS

The PB asks (in its analysis of the original bill) what happens with SOs and references in the sex offender registry when convictions come within the scope of SONRA currently, but are no longer within that scope if HB 298 is enacted?

AMENDMENTS

The PB recommends the bill clarify the means by which one can determine when the additional intent requirement necessary for kidnapping and false imprisonment to be classified as sex offenses under SORNA is present, suggesting the issue might be addressed perhaps along the lines of the “serious violent offense” designation.

OTHER COMMENTS

RSOL New Mexico, a citizen group comprised of sex offenders, family members, and other citizens concerned about SORNA, comments in its analysis of the original bill that the verification process set out in HB 298 is utilized in many states across the United States and may improve compliance with SORNA, resulting in fewer prosecutions and convictions and related costs for SORNA violations. RSOL New Mexico also notes that clarifying the preemption clause will provide guidance and uniform application of SORNA across the state.

MD/svb:mew