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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/15
 SPONSOR Fajardo LAST UPDATED 01/31/15 HB 125/aHJC
 SHORT TITLE Communication of Certain Images to Children SB _____
 ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General’s Office (AGO)
- Administrative Office of the District Attorneys (AODA)
- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)
- New Mexico Sentencing Commission (NMSC)
- New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment adds the element of specific intent--to expose the recipient to images that are obscene--when a perpetrator knowingly and intentionally communicates directly with a specific child under 16 years of age by sending the child obscene images of **another** person’s intimate parts by means of an electronic communication device and the perpetrator is at least four years older than the child. The criminal penalty for this crime under these circumstances remains a fourth degree felony.

Synopsis of Original Bill

House Bill 125 expands the crime of criminal sexual communication with a child to include sending a child obscene images of **any** person’s intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child. Under current law, such actions only constitute a crime when the perpetrator sends the child images of the perpetrator’s own intimate parts. The criminal penalty remains a fourth degree felony.

FISCAL IMPLICATIONS

AODA and NMCD report that expanding the definition of criminal activity as HB 125 does may result in increased prosecutions, court proceedings, imprisonment, and probation and parole costs, but neither predicts significant negative fiscal impacts.

SIGNIFICANT ISSUES

AODA advises the challenge in enacting statutes of this nature is to make them broad enough to cover the conduct sought to be prohibited but narrow enough to exclude other conduct, and clear enough that anyone reading the statute would know what conduct is criminal and what conduct is not. While the term “obscene” is not defined and could raise First Amendment freedom of speech issues, PDD points out that the definition of “harmful to minors” applicable to this law passes First Amendment scrutiny. As AODA notes, prior to bringing charges under this section, a district attorney must first determine that the images are harmful to minors. Additionally, the district attorney must give notice of that determination to the person to be charged, and that person may then seek a judicial determination of correctness. See Sections 30-37-1 and 4, NMSA 1978.

Further, employees of a school, museum or public library are already excluded from prosecution under this law. See 30-37-5(D), NMSA 1978.

RELATIONSHIP

HB 142 also makes criminal the distribution of certain images, but HB 142 is not limited to communications with a child. Unlike HB 125, HB 142 applies to images that may reasonably be considered to be private, intimate or inappropriate for distribution or publication without consent of the person depicted, but are not necessarily “obscene.”

MD/bb