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FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 02/28/01 HB _____
 SHORT TITLE: Amend Sexual Exploitation of Children Act SB 150
 ANALYST: Dunbar

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Minimal			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 17 and HB 40

SOURCES OF INFORMATION

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department

SUMMARY

Synopsis of Original Bill

This bill enhances Section 30-6A-3 NMSA 1978, sexual exploitation of children by adding simple possession of child pornography to the list of criminal infringements under this section. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

Significant Issues

Current law only prohibits distributing and manufacturing of child pornography.

FISCAL IMPLICATIONS

It will cost the judicial system \$400 for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact to the Judiciary and the Public Defender would be proportional to the enforcement of this law. This amendment could also increase the caseloads of the district attorneys, the public defenders and the Judiciary.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

This bill is identical to HB 17 and HB 40

SUBSTANTIVE ISSUES

The Public Defender Department believes the language of the proposed amendment may violate due process as it contemplates broad prosecutorial discretion in defining child pornography. Presently written current law, Section 30-6A-1 helps define both the exploitive nature of the crime and the crime itself, by requiring some manner of affirmative act ('distribution', 'intent to distribute', 'cause or permit', 'manufacture') to trigger a violation. Distribution, intent to distribute, causing or permitting and manufacturing child pornography not only demonstrates an exploitive intent upon the protected class, but indicates that the perpetrator intends the items for either personal gratification, or "for the purpose of sexual stimulation." (30-6A-2 paragraph 5 "*Definitions*") The new language broadly expands the reach of the statute by making mere possession of material, that may or may not be fit the present strictures of the statute, a crime. By disposing of the defining nature of sexual exploitation illustrated by the affirmative acts, this amendment allows a governmental authority to not only determine that a citizen knew or should have known that the material was 'sexually exploitive' of children, but that the material itself violates the statute.

The Public Defender goes on to say that the mere act of downloading material, the nature of which is unknown to the recipient, would trigger a violation of the proposed amendment. Finally, the language "any visual or print medium depicting any sexual act" could conceivably make criminal the possession of any illustrated or electronically enhanced renditions (Barnes and Noble now offers books on line) of not only questionable material, but literary, religious and artistic masterpieces from Rubeens to Rousseau to The Bible to Shakespeare (Romeo and Juliet were fourteen and thirteen respectively).

DW/ar