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FISCAL IMPACT REPORT

SPONSOR: Foley DATE TYPED: 02/18/03 HB 449

SHORT TITLE: Sex Offender Registration Requirements SB _____

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Corrections (DOC)
 Attorney General's Office (AGO)
 Department of Public Safety (SPS)
 Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 449 amends the Sex Offender Registration and Notification Act. Changes include modifying the time limits for registration from annually to every 90 days, the definition of a sex offender includes all persons (irrespective of age), and the length of registration requirements depends on the particular sex offense conviction.

Significant Issues

This bill adds juveniles and misdemeanor offenders to the category of sex offenders who must register with the county sheriff. It also requires that additional information be provided; it lengthens the registration period from 20 years to natural life for certain offenders, and requires this information to be included in the motor vehicle registry.

One purpose of this bill is to bring the state into compliance with the Federal Jacob Wetterling

Act which requires that sexually violent predators, aggravated offenders, and recidivists be subject to lifetime registration, without possibility of removal from the system. It also requires quarterly address verification. Most of the changes in this bill relate to maintaining federal compliance.

FISCAL IMPLICATIONS

Failure to comply with the requirements of the Jacob Wetterling Act will cost the state ten percent of all Edward Byrne Formula Grants. Since these grants total approximately \$4.0 million, the state would lose approximately \$400.0.

The proposed amendments to the Sex Offender Registration and Notification Act in HB 449 may increase Department of Corrections (DOC) costs because of the lengthier and more stringent registration requirements. Sex offenders' failure to comply with the provisions of this bill will likely result in an increase in prosecutions for failure to comply and in probation violations for failure to comply. It is anticipated that probation violations will result in more sex offenders being returned to prison. The proposed amendments would result in a small increase in the administrative burden on DOC records managers and probation and parole officers.

OTHER SUBSTANTIVE ISSUES

The proposed legislation may conflict with the New Mexico Children's Code where "convictions" do not result and requires the court to seal records of juvenile offenders. Five states currently specifically exclude juveniles from registration requirements. Sixteen states subject juveniles to provisions of registration laws.

According to the Attorney General's Office (AGO), there are several constitutional challenges pending in the New Mexico Supreme Court and the New Mexico Court of Appeals concerning the interpretation and enforcement of the Sex Offender Registration and Notification Act.

The pending cases are:

Doe v. Department of Public Safety, New Mexico Supreme Court No. 27,854

State v. Brothers, New Mexico Supreme Court No. 27,739

State v. Furr, New Mexico Supreme Court No. 27,561

State v. Druktenis, New Mexico Court of Appeals No. 22,437

Also, two cases are currently pending in the United States Supreme Court. The cases are: *Doe v. Department of Public Safety*, 271 F.3d 38 (2d Cir. 2001)(due process challenge to Connecticut's sex offender registration and notification law) and *Doe v. Otte*, 259 F.3d 979 (9th Cir. 2001)(ex post facto challenge to Alaska's sex offender registration and notification law). Both cases challenge the registration and notification requirements including the use of the Internet for sex offenders. Decisions are anticipated before the end of the court term.

CONFLICT

A conflict exists between the current New Mexico Children's Code pertaining to the definition of a "sex offender" and whether a juvenile sex offender would be required to register because a juvenile is found "delinquent" (instead of "guilty").

AMMENDMENTS

According to the DOC, at page 3, line 21, it is unclear whether the phrase “offenses set forth in Paragraphs (1) through (8)” is intended to read “Paragraphs (1) through (9)” in order to include the crime of enticement of a child into the category of attempt to commit enumerated sex offenses, a conviction of which would trigger sex offender registration requirements.

LG/ls