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FISCAL IMPACT REPORT

SPONSOR: Carraro DATE TYPED: 03/13/03 HB _____

SHORT TITLE: Sex Offender Registration Requirements SB 569/aSPAC

ANALYST: Fox-Young

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Administrative Office of the Courts (AOC)
 Attorney General’s Office (AG)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)

SUMMARY

Synopsis of SPAC Amendment

The Senate Public Affairs Committee removes juveniles from the definition of “sex offender.”

Synopsis of Original Bill

Senate Bill 569 amends the Sex Offender Registration and Notification Act. The bill:

- Expands the definition of “sex offender” to include juveniles and individuals who visit the state for more than 24 hours;
- Expands the definition of “sex offense” to include Aggravated Indecent Exposure and Enticement of a Child;
- Provides that a sex offender shall register with the county sheriff no later than 24 hours after being released from the custody of the Corrections Department (CD) or otherwise establishing residence in the state;

- Expands sex offender registration requirements to include information regarding all residences owned, specifying the primary residence, and motor vehicle registration information with a description of all motor vehicles owned;
- Requires a visiting sex offender to provide the sheriff with motor vehicle registration information and a description of all motor vehicles he owns or will be use while in the state;
- Requires a sheriff registering a sex offender to obtain a DNA sample;
- Requires a registered sex offender who moves within a county to send written notice of his change of address prior to establishing his new residence;
- Requires sex offenders moving to a different county in New Mexico to register within 24 hours and to send written notice of a change of residence to the sheriff with whom he last registered within 24 hours, including proof of the new residence;
- Requires a sex offender required to register pursuant to Section 29-11A-5(D) NMSA (a more serious sex offender) to renew his registration with the county every 90 days following his initial registration for the entirety of his nature life;
- Requires a sex offender required to register pursuant to Section 29-11A-5(E) NMSA (a less serious sex offender) to renew his registration every 90 days following his initial registration for a period of 20 years;
- Provides that for more serious sex offenders, registration information must be retained for the entirety of the sex offender's life and for less serious offenders, for twenty years;
- Provides that a sex offender who intends to move from New Mexico to another state must provide the county sheriff with written notice identifying the new address of the residence to which the offender is moving;
- Increases the penalty for failing to follow the required procedures when moving to another state from a misdemeanor to a fourth degree felony and imprisonment for a definite term of one year and/or a fine of not more than \$1000;
- Expands the list of offenses that trigger the forwarding of registration information to the district attorney and the municipality with jurisdiction to include Criminal Sexual Penetration in the third degree, and the intentional manufacture of any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age; and
- Mandates that the Department of Public Safety (DPS) shall establish and manage an Internet web site providing the public with registration information regarding sex offenders. (Under current law, DPS may establish such a site.)

Significant Issues

The Attorney General (AG) reports that there are several constitutional challenges pending in the New Mexico Supreme Court, the New Mexico Court of Appeals and the U.S. Supreme Court 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

Doe v. Otte, 259 F.3d 979, 9th Cir. 2001)

On March 5, 2003 the Supreme Court of the United States overturned the May 17, 2001 ruling of the United States District Court in the matter of John Doe v. Henry C. Lee, et al. The court ruled that states may put pictures of convicted sex offenders on the Internet without unconstitutionally punishing them twice. Although current New Mexico law does not require DPS to post photographs of sex offenders, that is the department's practice.

AG notes that registration for the entirety of the sex offender's natural life, as required by the bill, may be interpreted as punitive.

AG notes that the provisions of the bill may conflict with the New Mexico Children's Code, where juvenile offenders are not convicted of a crime but rather are found delinquent, and courts are required to seal the records of juvenile offenders.

The Public Defender Department (PDD) notes that the bill conflicts with the Commerce Clause of the United States Constitution in that it infringes upon the right of citizens to travel.

AG reports that legislation regarding the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071, is currently pending in Congress and that states' registration and notification requirements may change pursuant to such legislation.

Effective enforcement of visitor registration and of registration within the 24-hour time limitation for all sex offenders is near impossible.

FISCAL IMPLICATIONS

The provision that sex offenders shall renew registration every ninety days, as opposed to annually, will have a significant fiscal impact on sheriffs' departments statewide and on DPS.

The Public Defender Department (PDD) notes that the number of sex offenders charged with felony convictions is likely to increase enormously as a result of the bill. Courts, district attorneys and PDD will likely see a significant increase in costs as a result of such litigation.

The appellate caseload will likely increase as well, meaning that courts, AG and PDD will likely need additional resources.

Sex offenders' failure to comply with the provisions of this bill will likely result in an increase in probation violations. This phenomenon will likely lead to growth in the prison population, prompting a significant increase in costs to the Corrections Department (CD). Additionally, there will likely be an increase in felony convictions as a result of the bill. PDD notes that because individuals who must register have already been convicted of felonies, convictions for failure to comply with the expanded registration requirements of the bill will subject them to an additional 2 ½ years in prison.

TECHNICAL ISSUES

The Administrative Office of the Courts (AOC) notes that the bill does not provide for a method of obtaining DNA samples, preventing contamination and providing appropriate chain of custody.

AG notes that the provision that the sex offender submit "motor vehicle registration with a description of all motor vehicles owned" does not provide for partial ownership of motor vehicles. Additionally, the provision that the sex offender submit "all residences he owns, specifying which address is his primary residence" does not include all residences at which the offender may reside.

AG recommends including specific language providing that juveniles who are found delinquent of a sex offense shall register as sex offenders.

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