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FISCAL IMPACT REPORT

SPONSOR: Swisstack DATE TYPED: 10/29/03 HB 4

SHORT TITLE: Create Sex Offender Management Board SB _____

ANALYST: Lockwood

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	\$250.0		Indeterminate (SeeNarrative)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 2, 3, 4 and 5

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Corrections Department (CD)

Department of Health (DOH)

SUMMARY

Synopsis of Bill

The bill creates the 13 member "Sex Offender Management Board" within the existing New Mexico Sentencing Commission. The bill appropriates \$250,000 to the New Mexico Sentencing Commission for expenditure in FY 04 and 05 to fund the operations of the Board.

The membership of the new Board includes certain members who are already members of the Sentencing Commission:

- Attorney General,

- a District Attorney appointed by the District Attorneys' Association of New Mexico,
- the Chief Public Defender,
- a District Court Judge appointed by the District Court Judges' Association,
- the Secretaries of Corrections, Health, and Children, Youth and Families, and
- one member of the public appointed by the Governor who is a representative of a New Mexico victims organization.

The membership also includes several members who are not currently members of the Sentencing Commission:

- two representatives appointed by the Governor who are mental health professionals licensed to practice in New Mexico, at least one of whom shall be a member of the Association for the Treatment of Sexual Abusers,
- a representative appointed by the Governor from the Adult Probation and Parole Division of the Corrections Department who has expertise in the supervision of sex offenders,
- a representative appointed by the Governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring,
- a representative appointed by the Governor who is affiliated with a civil liberties organization, and
- a representative appointed by the Governor who is affiliated with a faith-based organization.

The bill sets out the duties of the Sex Offender Management Board, including the power and duties to:

- 1) hold meetings at least eight times a year;
- 2) develop and prescribe a standard procedure for the identification and evaluation of convicted sex offenders, including behavior management, monitoring, treatment and program compliance as well as measures of success;
- 3) develop and implement guidelines and standards for the treatment of sex offenders that can be used by offenders who are placed on probation, incarcerated by the Corrections Department, placed on parole or placed in a community corrections program. The guidelines and standards shall include a monitoring process and a plan for developing treatment programs for sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;
- 4) create a risk assessment screening tool;
- 5) develop guidelines and standards for monitoring sex offenders;
- 6) develop criteria for measuring a sex offender's progress in treatment;

- 7) develop a standardized procedure for the identification and evaluation of juvenile sex offenders;
- 8) develop and implement guidelines and standards for the treatment of juvenile sex offenders;
- 9) research and analyze safety issues raised when sex offenders live in a community;
- 10) study the viability and legality of a civil commitment program for sex offenders;
- 11) research and determine the feasibility and legality of implementing indeterminate sentencing for sex offenders;
- 12) study the use of clinical polygraph testing as a means to evaluate sex offenders;
- 13) evaluate sex offender treatment programs administered by state agencies and recommend necessary changes; and
- 14) review the provisions of the Sex Offender Notification and Registration Act and recommend necessary changes.

The Sex Offender Management Board is required to report its findings and recommendations to the New Mexico Sentencing Commission on a quarterly basis. The Sentencing Commission must vote to approve, disapprove or revise the recommendations of the Board. The members of the Board will be paid pursuant to the Per Diem and Mileage Act and receive no other compensation.

The bill includes an emergency clause.

Significant Issues

According to the Corrections Department, the most significant issue is that a Sex Offender Management Board is necessary to create a risk and needs assessment tool that can be used to determine the appropriate programming for inmates, probationers, and parolees, as well as the length and conditions of probation and parole for sex offenders. This will ensure that resources are used in the most efficient manner.

The Attorney General's Office cites the following as significant issues:

1. The purpose of this board seems to be to act as an advisory committee to the New Mexico Sentencing Commission, but some of the directives to the new board appear to empower it to act directly. The strictly advisory role of the board should be clarified. The board is a non-voting entity.
2. The review of Megan's Law should be more specific, i.e. to include the duty to recommend changes to Megan's Law in accordance with federal rules and regulations in order to receive all available federal grants and monies.
3. Under Section 1, on pages 12-13, the bill language states "study the use of clinical

polygraph testing as a means to evaluate sex offenders”. Currently, the legality of the use of polygraph examinations in criminal proceedings is being adjudicated before the New Mexico Supreme Court. It may be appropriate to delete this directive.

According to the Department of Health, New Mexico has not been able to take advantage of federal funds due to poor and ineffective registration and notification practices. Moreover, despite the intention of enhancing public safety, New Mexico’s registration and notification practices have had negative effects on the criminal justice system, the community, victims, and offenders. New Mexico must make efforts to reduce such effects. Such efforts, if conducted in a multi-disciplinary, collaborative fashion, will have much more positive results. (See Substantive Issues below)

FISCAL IMPLICATIONS

The bill appropriates \$250.0 to the New Mexico Sentencing Commission for expenditure in FY 04 and 05 to fund the operations of the Sex Offender Management Board. Any unexpended or unencumbered balance remaining at the end of FY 05 shall revert to the general fund.

HB 4 would provide for the members of the Board to receive per diem and mileage. These and other administrative costs would be recurring.

ADMINISTRATIVE IMPLICATIONS

There will be a slight to moderate increase in the administrative burden on the members of the new board and on others required to submit information to the Board.

RELATIONSHIP

House Bill 4 relates to House Bills 2,3,5 and 6 that also address sex offender legislation.

OTHER SUBSTANTIVE ISSUES

The Department of Health notes the following:

- Safety of victims and community is of the utmost importance. This requires that New Mexico look at the risk sex offender’s pose and the need to assess sex offender management in this State. Many states in the U.S. have sex offender management boards. While there are different approaches to sex offender management, common elements include:
 1. Goals that are directed toward public safety and offender accountability – this involves a deliberate, comprehensive approach to sex offender management;
 2. Progress on enhancing collaborative efforts;
 3. Continual assessment and improvement of sex offender management practices;
 4. A work plan that reflects an articulated mission, as well as the Board’s values/goals;

5. A data collection effort that is outcome based and directed toward identifying policies and practices which help prevent future victimization; and
 6. A plan to institutionalize efforts to ensure the work outlives current team membership.
- The Las Vegas Medical Center's S.T.O.P Program is the only State operated residential inpatient program providing specialized sex offender treatment to sex offenders admitted either from the Department of Corrections (DOC) or the New Mexico Judicial System. Those admitted for treatment are either parolees from DOC or probationers from the Judicial System. The S.T.O.P Program has evolved into an effective treatment program and could be utilized as a resource site regarding the effective treatment of sex offenders by the proposed Sex Offender Management Board.
 - Based on analyses of self report victimization surveys of women, researchers know that most sexual assaults are committed by someone known to the victim or the victim's family, regardless of whether the victim is a child or an adult (Greenfield, 1997). Approximately 78 forcible rapes of women 18 years of age and older are committed each hour in the U.S., and 1 of 6 U.S. women and 1 of 33 U.S. men have experienced an attempted or completed rape as a child and/or adult (Tjaden & Thoennes, 1998). At least one in five girls and one in seven boys have been sexually abused by age 18 (Finkelhor, 1994). Sexual crimes often are perpetrated against youth; 22 percent of female rape victims were assaulted before they were 12; 32 percent were between 12 and 17 at the time they were sexually assaulted (Tjaden & Thoennes, 1998). Approximately two-thirds of state prisoners convicted of rape or sexual assault offended against children (Greenfield, 1997).
 - The passage of HB 4 would begin to address the serious problem(s) posed by the sex offender population for New Mexico. The "Akers case" in Bernalillo County has brought the issues and concerns of sex offenders to the forefront. However, state laws dealing with sex offenders, often passed as a result of a high profile sex crime, create a tremendous amount of unintended consequences that usually result in litigation that is costly and nonproductive. With the Board being proactive versus reactive, the management of the sex offender population would be much more effective and efficient. The Board, whose membership includes key individuals involved in the sex offender realm, would be better able to recommend needed and necessary elements to protect the public from known sex offenders. The Board would also be in a position to promote treatment and ongoing assessments by practitioners for sex offenders who could benefit from such interventions. The Board would also be able to address the need for a predator law, as not all sex offenders are amenable to treatment. Risk assessment is the most important component of successful management of the sex offender population. It would provide those in charge of supervision and monitoring necessary information to better utilize resources. The Board would also support effective and efficient programs and assure or promote the necessity of adequate funding.
 - Despite recent legislative changes and sentencing practices that increase the likelihood and length of incarceration for convicted sex offenders, many of these offenders are supervised in the community. A U.S. Department of Justice study (Greenfield, 1997) reports that approximately 265,000 adult sex offenders are under the care, custody, or con-

trol of correctional agencies in the U.S. Of these, almost 60 percent are under some form of community supervision. Most offenders who are convicted of one or more sex crimes will be supervised in the community at some point, either immediately following sentencing or after a period of incarceration in jail or prison. These offenders present unique challenges to those agencies responsible for their management. Because of the potentially volatile community response to sex offenders, and the irrefutable harm that re-offenses would cause potential victims, the management of these offenders - from arrest to incarceration to community supervision- is of critical importance to criminal justice agencies and the public.

- The establishment of clear and consistent policies at all levels (state, local, and agency) is a crucial component of sex offender management. Clear policy defines how cases will be investigated, prosecuted, adjudicated, supervised, and tracked. It also defines, for example, the method of community supervision and the roles various agencies play in the offender management process. Consensus built policy serves as a vehicle to carry the goals of the system. These are best developed through the establishment of a collaborative team and the use of a strategic planning process. Policies must be developed that address and effectively connect together the many components of sex offender management.
- All states have enacted sex offender registration laws as a means of deterring offenders from committing future crimes, providing law enforcement with an additional investigative tool, and increasing public protection. To achieve such goals, states have developed numerous promising approaches to sex offender registration. These include developing written policies and procedures detailing the process, collecting thorough information on registered sex offenders, providing ready access to this information for all law enforcement officers, and developing systems to transfer registration information within and across state lines effectively and efficiently so that offenders cannot escape registration obligations. The most comprehensive approaches to sex offender registration involves the collaboration and coordination of efforts among all of the agencies involved in the process for the primary purpose of preventing further sexual victimization. Also, as a result of federal legislation, all 50 states have enacted sex offender community notification laws. The primary objective of these laws is to ensure that the public can access information that will assist them in protecting themselves and their families from dangerous sex offenders who reside in their communities. Tremendous variation exists among the states, and even within states, in how these statutes have been implemented.