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## FISCAL IMPACT REPORT

SPONSOR Youngberg DATE TYPED 2/21/05 HB 712

SHORT TITLE Sexual Offenses Against Incapacitated Persons SB \_\_\_\_\_

ANALYST Wilson

### APPROPRIATION

| Appropriation Contained |      | Estimated Additional Impact |               | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|---------------|----------------------|---------------|
| FY05                    | FY06 | FY05                        | FY06          |                      |               |
|                         |      |                             | See Narrative |                      |               |

Relates to HB 505 & HB 713

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)

Attorney General's Office (AGO)

Corrections Department (CD)

Department of Public Safety (DPS)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 712 amends current statute to enhance the criminal penalties for sexual offenses committed against incapacitated persons. It raises the penalty for criminal sexual contact on a person who is incapacitated for any reason from a misdemeanor to a fourth degree felony. An incapacitated person includes a victim who is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that limits the capacity of the victim to understand the nature or consequences of the act.

While the current statute does penalize offenders for engaging in sexual acts with incapacitated persons, generally the penalty is only triggered if the victim suffers great bodily harm or some degree of personal injury.

This bill will remove the personal injury requirement for the following crimes: criminal sexual penetration in the second degree; criminal sexual contact in the fourth degree; and criminal sexual contact of a minor in the second and third degree.

### Significant Issues

The AODA states that as a practical matter this bill will make it far more possible for the state to prove the crimes of criminal sexual penetration and criminal sexual contact when committed upon persons suffering from mental handicaps which render them far more vulnerable to such crimes. At present, the state bears the very difficult challenge of proving that a victim was "incapable of understanding" and this burden frequently prevents full prosecution of many offenses against society's most vulnerable victims. Accordingly, the enactment of this statute is likely to result in more prosecutable cases and tougher sentences for offenders.

The PDD notes that great mental anguish is already in the statute as an aggravator and is included as an aggravator for incapacitated persons, this term is vague in the context of criminal sexual penetration. Arguably, it is abnormal not to suffer mental anguish as the result of a violent crime.

### **FISCAL IMPLICATIONS**

The enactment of this bill may result in the prosecution of an unknown number of additional cases since the state doesn't have to prove that a victim's condition renders the victim *incapable* of understanding. The state will only need to prove that the condition *limits the victim's understanding*. If more offenders are charged and convicted under this statute, and the statute includes provisions for mandatory incarceration and longer period of probation, there are likely to be at least some additional costs for various state agencies, including the district attorneys, public Defenders, courts, CD and probation and parole officers.

### **ADMINISTRATIVE IMPLICATIONS**

This bill will result in more cases referred to district attorneys, the public defenders, the courts and prison, parole and probation officers, thus increasing current workloads.

### **RELATIONSHIP**

HB 712 relates to HB 505, Revise Criminal Sexual Contact of a Minor and HB 713, Distribution of Rape Drugs.

### **TECHNICAL ISSUES**

The AODA suggests Section 30-9-13(B) be amended to include the touching "of the unclothed intimate parts of another" and making criminal sexual contact a second degree felony instead of a third degree. The present language refers only to "contact of the unclothed intimate parts of a minor" and does not adequately address the common situation in which an offender has a victim touch *the offender's* unclothed parts. Failure to make this amendment will cause this kind of offense to remain as third CSC, and is not consistent with the rest of the statute.