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## FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 1/22/05 HB \_\_\_\_\_

SHORT TITLE Sex Offender Registration Requirements SB 55

ANALYST Wilson

### APPROPRIATION

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

### SOURCES OF INFORMATION

LFC Files

Responses Received From  
 Corrections Department (CD)  
 Attorney General’s Office (AGO)  
 Public Defender Department (PDD)  
 Administrative Office of District Attorneys (AODA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 55 amends the Sex Offender Registration and Notification Act as follows:

- Expands the definition of sex offenders required to register pursuant to the act;
- Requires the registration of out-of-state sex offenders who visit New Mexico for more than twenty-four hours;
- Eliminates the requirement that sex offenders be at least eighteen years of age so that juvenile offenders convicted of any of the enumerated sex offenses are required to register;
- Adds the offenses of aggravated indecent exposure and enticement of a child to the enumerated sex offenses which trigger offender registration

- Requires sex offenders to register with the county sheriff no longer than twenty-four hours after coming into the state or being released from a New Mexico correctional facility as opposed to 10 days as presently required.
- Requires sex offenders to provide information concerning all residences owned by the offender and specify which address is his primary residence;
- Requires sex offenders to provide all motor vehicle registration information for all motor vehicles owned by the sex offender;
- Mandates sex offenders to provide a DNA sample at the time of registration;
- Requires sex offenders registered under this act to notify the county sheriff prior to establishing a new residence. If a registered sex offender moves to a new county, he must register with the sheriff in the new county within twenty-four hours. If a registered sex offender moves from New Mexico to another state, he must notify the sheriff in the New Mexico county from which he is moving of his new address; and
- Requires registered offenders to renew their registration with the county sheriff once every ninety days for either the entirety of the offenders' natural lives or for twenty years, depending on the underlying sex offense;

#### Significant Issues

The AGO questioned the ability of law enforcement to enforce the “visiting” sex offender provision and raised administrative issues arising from this type of monitoring; for example, verifying with the resident state the exact crime and registration requirements. In addition, the definition of a sex offender would have no age limitation and rely on the mere conviction. This lifting of the age restriction may seek to include juvenile sex offenders but the use of the word “convicted” generally applies only to adults. Juveniles are usually found “delinquent” according to the Children’s Code.

The requirement for a sex offender to register requires a sex offender every ninety days, as opposed to annually, complies with federal law.

The AGO further notes Section 29-11A-4 (H) which requires a sex offender to register for the entirety of his natural life, may be interpreted as severe and punitive by the New Mexico appellate courts on state constitutional grounds.

The registration of visitors to New Mexico may be problematic especially when balanced with the strong push and advertisement for New Mexico tourism. Practically, it is difficult to detect and know if an individual is a visitor and whether or not each location in New Mexico during the travels requires a separate registration. For example, an individual may visit Santa Fe for a day and one-half and then travel to Taos for a day and one-half. SB 55 will require the individual to register both in Santa Fe County and in Taos County.

The PDD believes the requirement of this bill for prior notification of moving, notification within 24 hours of release or establishing residence, renewal of registration every 90 days, and

lifetime registration are very difficult to comply with. Any slip subjects a person, no matter how innocent the lapse, to a fourth degree felony. Because the persons who must register already have a felony conviction by definition, they are subject to 2 years imprisonment under the legislation.

The requirement that persons visiting the state must register will be difficult to enforce unless a visitor comes into contact with law enforcement officials for minor traffic offenses or accidental encounters.

### **FISCAL IMPLICATIONS**

This bill will require registration every ninety days, as opposed to annually. The financial implications of this registration requirement on the county sheriffs departments throughout the State as well as the Department of Public Safety need to be determined.

The PDD notes this legislation has the potential to increase caseloads for all participants in the criminal justice system. The registration requirements are onerous and difficult to comply with. While the exact number of cases that will result from this legislation is difficult to predict, its provisions are so easy to violate that it is not unreasonable to assume that hundreds of such cases will be charged yearly.

As of July 28, 2003, 1,490 persons were registered as sex offenders in New Mexico. Based on the recurring responsibility to report information (4 times per year for information that does not change and within 24 hours for changes), it is not unreasonable to predict that the PDD will handle hundreds of new offenses and probation violations each year.

The CD believes this bill will increase costs to them due to the proposed lengthier and more stringent registration requirements since sex offenders' failure to comply with the requirements 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.

### **ADMINISTRATIVE IMPLICATIONS**

This bill will result in an increase in the administrative burden on the district attorneys, the public defenders and the whole court system as well as the correctional facilities records managers and probation and parole officers.

### **TECHNICAL ISSUES**

The AGO submitted the following:

- Include a definition of "residence" in Section 29-11A-4(B)(4).
- Ownership of motor vehicles—Section 29-11A-4(B)(5) should include partial ownership of motor vehicles. For example, an individual may co-own a motor vehicle with another household or family member.

**OTHER SUBSTANTIVE ISSUES**

It may not be possible for offenders to register with the county sheriff within 24 hours following release from incarceration if the county sheriff's administrative offices (where offenders would register) are closed on weekends or holidays, and the offender is released from incarceration near or on a weekend or holiday.

**DW/lg**