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FISCAL IMPACT REPORT

SPONSOR García, M.J. **DATE TYPED** 3/8/05 **HB** _____

SHORT TITLE Create Child Solicitation by Computer Offense **SB** 415/aSJC

ANALYST Medina

APPROPRIATION

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

(Parenthesis () Indicate Expenditure Decreases)

Relates to

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General (AG)
 Children, Youth, and Families Department (CYFD)
 Corrections Department (DOC)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment changes the meaning of child solicitation by computer from consisting of a person knowingly and intentionally inducing a child by means of computer to a person knowingly and intentionally soliciting a child by means of computer. The amendment also restores the level of the criminal offense to a second degree felony.

Synopsis of Original Bill

Senate Bill 415 modifies Section 30-37-3.2 NMSA 1978 to eliminate the criminal offenses of dissemination of material that is harmful to a minor by computer and child luring. The bill creates a new criminal offense, “child solicitation by computer”, and mandates that any person who commits this criminal offense be guilty of a second degree felony.

Significant Issues

According to the Attorney General's analysis, the sections of statute eliminated in this bill, which relate to the dissemination of material harmful to minors, were found unconstitutional by the Tenth Circuit Court of Appeals in *A.C.L.U v. Johnson*, 195 F.3d 1149 (1999). The AG notes that the provisions of the eliminated sections were held to violate the free speech and commerce clauses of the US Constitution, and all enforcement of those sections was enjoined in *A.C.L.U v. Johnson*, 195 F.3d 1149 (1999). Section B (child luring), which made it a crime to induce a child into sexual conduct by computer, was not included in the challenge, but the law lacked a severability clause and consequently there has been a question whether the child luring law was enforceable. This bill eliminates the enjoined provisions and reenacts the child luring section, with amendments, to remove that question.

The AG states that this bill also cures some defects in the child luring law which severely limited its usefulness. First, it elevates the criminal offense from a fourth to a second degree felony, bringing the penalty in line with penalties in other states, and thereby makes New Mexico less attractive to sexual predators. The bill also clarifies that the crime is committed even in a case where the sexual predator's intended victim is actually an undercover peace officer posing as a child under sixteen online. Finally, the bill clarifies that the criminal offense is committed in New Mexico if either the victim or the offender is in the state.

PERFORMANCE IMPLICATIONS

DPS notes the following: "The bill presents performance implications for the Department Public Safety (DPS) in that the new crime will likely require registration as a sex offender under the state's Sex Offender Registration and Notification Act (SORNA). SORNA requires DPS to house the sex offender registry, and act as the conduit to the federal information database. This act may impact DPS's performance with regard to this registry."

ADMINISTRATIVE IMPLICATIONS

The AG currently operates a federally-funded Child Internet Exploitation unit which investigates online predators. This change proposed in this bill would increase the number of cases which can be prosecuted by the AG.

The AODA also notes that legislation which enhances penalties or creates new offenses increases the workload in a district attorney's office.

OTHER SUBSTANTIVE ISSUES

According to AODA, this new law will be subject to the notice provision of Section 30-37-NMSA 1978 and amendment to this bill or to Section 30-37-4, NMSA 1978 will be needed to keep this bill from the notice provisions of Section 30-37-4.

ALTERNATIVES

The AG states that the proposed statute retains key language which prohibits "inducing a child" to engage in sexual acts. This word "inducing" suggests that the individual must actually cause a

child to engage in a sex act, which renders the statute potentially ineffective in most involving actual child victims, and wholly ineffective in cases in which the undercover officers are posing as a child. The AG suggests that changing the word “inducing” to “soliciting” would cure this problem.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The AG notes that the Internet exploitation of New Mexico children will be largely unprosecuted. The AODA notes that cases will continue to be prosecuted under present sexual offense statutes and/or Contributing to the Delinquency of a Minor statute.

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