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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/07

SPONSOR Swisstack LAST UPDATED _____ HB 738/aHCPAC

SHORT TITLE Public Disclosure of Child Info SB _____

ANALYST Peery-Galon

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY07 | FY08 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Department of Public Safety (DPS)
 New Mexico Sentencing Commission (NMSC)
 Public Education Department (PED)
 New Mexico Corrections Department (NMCD)
 Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)

No Responses Received From

New Mexico Municipal League
 New Mexico Association of Counties

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 738 adds to page 2, line 3, after the word “child” the following language: “except information required to be disclosed pursuant to the Sex Offender Registration and Notification Act.” The language creates an exception for information that would be posted on the Department of Public Safety sex offender registry for a juvenile convicted as an adult for commission of a sex offense.

Synopsis of Original Bill

House Bill 738 requires that a state agency or a political subdivision of the state, including a school district, county, municipality or home-rule municipality, not to disclose on a public access

web site maintained by it any information on the following: an arrest or detention of a child, delinquency proceedings for a child, an adjudication of a child, an adult sentence imposed on a child, or social records pertaining to a child as provided by Section 32A-2-32 NMSA 1978.

SIGNIFICANT ISSUES

CYFD states when not strictly necessary for public safety, it is preferable to maintain the highest level of confidentiality possible concerning children's information, thereby protecting them from unintended long-term stigma and leaving future opportunities for employment and other social involvement open and available to them. CYFD notes this is based on the premise that youth should be rehabilitated, not punished.

DPS maintains the state's sex offender registry and, as such, information on certain juvenile offenders that have been adjudicated as an adult. If the juvenile has been adjudicated as an adult and meets the criteria for placement in the registry, it is possible the juvenile will be on the state's sex offender web site.

PED states that social records pertaining to a child prohibits disclosure of information already deemed to be confidential records according to Section 32A-2-32 NMSA 1978 of the Children's Code. PED notes that disclosure of such records is a crime.

PED notes that given the proposed legislation does not impose consequences for disclosing the information placed on a public access web site and that almost all of information prohibited by this proposed legislation is public information that can lawfully be reported by the media or the public, a court reviewing a violation might consider it to be "directory" as opposed to "mandatory." PED references *Board of Education v. Jennings*, 98 N.M. 602, 610 (Ct. App. 1982) and *Stokes v. Tatman*, 11 N.M. 188 (S. Ct. 1990).

ADMINISTRATIVE IMPLICATIONS

NMCD states if the proposed legislation passes, the department will have to manually remove the prohibited information from its web site. Another option is to assign an employee to develop and implement a computer program to automatically exclude the information regarding minors sentenced as adults from the department's website.

OTHER SUBSTANTIVE ISSUES

CYFD states because adult convictions are a matter of public record, it is unclear legally whether the proposed legislation can prevent the release of information concerning the imposition of an adult sentence on a youth. CYFD reports the disposition of a youthful offender provides that while the district court may sentence the child to less than the mandatory adult sentence, a youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarcerations of persons sentenced to adult sentences.

ALTERNATIVES

CYFD suggest incorporating the prohibition on the public dissemination of details concerning the arrest or detention of a child, delinquency proceedings of a child, an adjudication of a child

and social records pertaining to a child into Section 32A-2-32 NMSA 1978, and address the adult sentencing of a youth in a separate provision, such as amending the current provision on disposition of a youthful offender to include the proposed prohibition on release of this information by public entity web sites.

RPG/mt