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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/07
 LAST UPDATED 3/07/07

SPONSOR Lopez HB _____

SHORT TITLE Criminal Sexual Communication with a Child SB 1106/aSJC

ANALYST C. Sanchez

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 920
 Conflicts with, HB 663, 918 and 735

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Corrections Department (CD)
 Department of Public Safety (DPS)
 Public Education Department (PED)
 Children Youth and Families Department (CYFD)
 Public Defender (PD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary amendment on page 1, line 25, strikes “three” and inserts in lieu thereof “four”. The perpetrator has to be at least four years older than the victim.

Synopsis of Original Bill

Senate Bill 1106 creates the fourth-degree felony crime of “Criminal Sexual Communication with a Child.” The crime consists of knowingly and intentionally communicating directly with a specific child under 16 by sending the child obscene images of the person’s intimate parts by means of an electronic communication device when the perpetrator is at least three years older

than the child. The bill defines “electronic communication device” and “intimate parts.” The effective date of the act is July 1, 2007.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the state would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

HB 663 and SB 735 amend Section 30-37-3.2 NMSA 1978 to create the crime of “child solicitation by electronic communication device,” consisting of a person knowingly and intentionally soliciting a child under 16 by means of an electronic communications device. Under these bills, child solicitation by electronic communication device when the person knowingly and intentionally communicates with a child under 16 by sending the child images of the person’s intimate parts by means of an electronic communication device equals a fourth degree felony. While creating a similar crime, HB 663 and SB 735 do the following:

- Amend Section 29-11A-3 NMSA 1978 to add the crime to the definition of “sex offense” as used in the Sex Offender Registration and Notification Act, Section 29-11A-1 et. seq. NMSA 1978.
- Provide that for purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.
- Amend Section 31-21-10.1 NMSA 1978 to include child solicitation by electronic communication device within the meaning of “sex offender” for purposes of determining periods, terms and conditions of parole.

ADMINISTRATIVE IMPLICATIONS

The Corrections Department can probably administratively absorb any minimal increases in the prison population and probation/parole caseloads.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 1106 conflicts with House Bills 663, 918 and 735. The bill duplicates House Bill 920.

TECHNICAL ISSUES

As written the law would require prosecution and law enforcement to prove that the person knowingly communicated with a child. Perpetrators that use methods identified in the bill to entice children would only be charged if the person they are communicating is a child and not when law enforcement is using preventive tools to identify predators.

The definition of “Electronic Communication Device” is a list of items including a computer, video recorder, digital camera, fax machine, telephone, pager, audio equipment or any other

device that can produce “electronically generated image, message or signal.” This list fails to differentiate telephones from cell-phones and the technology used for each is different. Also, compare federal law at, 18 U.S. Code Section 1471, “Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.”

OTHER SUBSTANTIVE ISSUES

There is no definition of “obscene images;” this omission may create unequal standards throughout the state as each prosecutor and judge decide what constitutes an “obscene image.” Also, limiting the image only to the “intimate parts” of the defendant could make for some very revealing defenses.

The prohibition in this bill would not prohibit a person from mailing or giving a child under 16 photographs, a CD, DVD or VHS recording of obscene images of that person’s intimate parts.

The sponsor might consider including the sending to children, by a person three years older, any obscene images as defined within this bill.

ALTERNATIVES

- 1) Amend Section 29-11A-3 NMSA 1978 to add the crime of Criminal Sexual Communication with a Child” to the definition of “sex offense” as used in the Sex Offender Registration and Notification Act, Section 29-11A-1 et. seq. NMSA 1978.
- 2) Provide that for purposes of determining jurisdiction, the crime is committed in this state if an electronic communication device transmission either originates or is received in this state.
- 3) Amend Section 31-21-10.1 NMSA 1978 to include Criminal Sexual Communication with a Child within the meaning of “sex offender” for purposes of determining periods, terms and conditions of parole.
- 4) On line 22 after person knowingly and intentionally communicating, add or a reasonable person would believe that he or she is communicating with.....

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The continual advancement in technology continues to be an area a where laws must be evolving to protect society from predators that use technology to victimize children.