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FISCAL IMPACT REPORT

ORIGINAL DATE 02/24/09

SPONSOR Ingle LAST UPDATED _____ HB _____

SHORT TITLE Multiple Voyeurism Offenses as Felonies SB 689

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General (AGO)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

Senate Bill 689 amends Section 30-9-20 NMSA 1978 to provide that an offender who commits a second or subsequent offense of voyeurism is guilty of a fourth degree felony. The result is an enhanced penalty for “serial” voyeurism offenders.

Under the current terms of Section 30-9-20 NMSA 1978, whoever commits voyeurism is guilty of a misdemeanor. When the victim is less than 18 years of age, the penalty is a fourth degree felony.

FISCAL IMPLICATIONS

Any fiscal impact should be minimal or negligible, however, it must be expected that an enhanced penalty should result in additional or more severe sentences with some associated cost increase. Both the AOC and AODA mention more required court time to dispose of cases with higher penalties.

SIGNIFICANT ISSUES

The AGO notes the following primarily relating to the original statute.

The bill amends the Voyeurism Criminal Statute Section 30-9-20 N.M.S.A. enacted in 2007. It maintains the original misdemeanor penalty when an adult victim is involved and makes second and subsequent offenses 4th degree felonies. It leaves the original penalty for cases with juvenile victims at the 4th degree felony level. The original statute appears to have arisen out of concern for prosecuting what has been called “upskirting” that was unsuccessfully litigated in *State vs. Myers* 2008-NMCA-047 under the Sexual Exploitation of Children Act. Certiorari is pending in the State Supreme Court on that case. The original statute was enacted after the Myers case was tried.

The constitutionality of the original statute has not been litigated. Certain elements of the news media may challenge the statute on First Amendment grounds. The statute as it exists requires a lack of knowledge or consent by the person being viewed. This would appear to protect legitimate artistic concerns where someone poses for viewing. Store security surveillance cameras and the use of long-range cameras by law enforcement and private investigators could run afoul of the statute. The new phenomenon of “sexting”, the sending of explicit photos via camera phones, may be a problem under the statute revolving around issues reasonable expectations of privacy versus consent. The modern technique of paparazzi taking surreptitious photos may violate the Act.

The statute as written runs close to the edge of the First Amendment. It is relatively narrowly drawn and serves the legitimate purpose of protecting persons from gross invasions of privacy. The balancing of competing constitutional rights is always difficult. Since the bill itself merely changes penalties, it does not directly raise the constitutional issues of the original statute. There are no reported New Mexico cases interpreting the statute.

MW/mt