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FISCAL IMPACT REPORT

ORIGINAL DATE 01/25/10

SPONSOR Rue LAST UPDATED _____ HB _____

SHORT TITLE Sex Offender Registration & Offenses SB 53

ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY10	FY11	FY12	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total			NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Attorney General Office (AGO)
 Department of Public Safety (DPS)
 Higher Education Department (HED)

SUMMARY

Synopsis of Bill

Senate Bill 53 amends provisions of the Sex Offender Registration and Notification Act, Section 29-11A-1 NMSA 1978 et. seq.

The bill defines the term “habitually lives” to mean any place where the sex offender lives for at least 30 days in any 365-day period. The bill would also require registration for a person who has been convicted of a sex offense pursuant to the law of a foreign nation that provides due process similar to that provided in the United States.

The list of “sex offenses” is expanded to include the following:

- Criminal sexual communication with a child, Section 30-37-3.3;
- Human trafficking, as provided by Section 30-52-1, for a sexual purpose when the victim is under 16; and
- Conspiracy to commit any of the offenses in this subsection, Section 30-28-2.

The bill would require sexual offenders to provide new information when registering with a county sheriff, including:

- The person's current address and address of every place where the sex offender habitually lives;
- The name and address of the person's place of employment;
- Every offense for which there has been a conviction;
- Date and place of every arrest;
- The sex offender's names, addresses, monikers, or other self-identifiers used in internet communications or postings or on other communications devices, to be used for law enforcement purposes;
- The sex offender's telephone numbers;
- The sex offender's professional licenses;
- The license plate or other identifier and the description of any vehicle owned or operated by the sex offender, including aircraft and watercraft;
- The name and address of any school or institution of higher education that the sex offender is attending; and
- Copies of the sex offender's passport and immigration documents.

Upon registration with the county sheriff, S.B. 53 would require the county sheriff to obtain the sex offender's palm print and physical description. Sex offenders would be required to notify county sheriff in writing when employed or changing employment in that county within 10 days of employment or a job change.

The bill would add to the list of offenses that trigger lifetime registration of sex offenders the offense of human trafficking under Section 30-52-1, for a sexual purpose when the victim is under 16. The bill downgrades from lifetime registration to 10-year registration the offense of criminal sexual contact in the fourth degree, Sec. 30-9-12. Two other new offenses would be added to the list of crimes requiring 10-year registration:

- criminal sexual communication with a child, Section 30-37-3.3, and
- conspiracy, Section 30-28-1, to commit any of the sex offenses in subsections D and E of Sec. 29-11A-5, as amended by S.B. 53.

Finally, the bill would require that specific information be posted by the Department of Public Safety upon the sex offender website, including:

- the sex offender's legal name and any other names or aliases that the sex offender is using or has used;
- the sex offender's current address and the address of every place where the sex offender habitually lives;
- the address of the sex offender's place of employment, if the sex offender's employment requires the sex offender to have direct contact with children;
- every sex offense for which the sex offender has been convicted;
- the sex offender's professional licenses;
- the license plate or other identifier and description of any vehicle owned or operated by the sex offender, including aircraft and watercraft;
- a photograph of the sex offender;
- a physical description, including a description of any tattoos, scars or other distinguishing features on the sex offender's body that would assist in identifying the sex offender; and

- the sex offender’s date of birth.

The bill provides that its provisions apply to a person convicted of a sex offense on or after July 1, 2005 and to a person convicted of a sex offense prior to July 1, 2005 and who, on July 1, 2005, was still incarcerated, on probation, or on parole for commission of that sex offense.

The effective date of the Act is July 1, 2010.

FISCAL IMPLICATIONS

There may be minimal costs associated with update and distribution of statutory changes. Any other costs would be paid by the law enforcement agency responsible for collecting and making public the additional information.

SIGNIFICANT ISSUES

The NMSC provides the following information:

The bill was developed by the Department of Public Safety to comply with certain requirements set forth in the federal Adam Walsh Act. During the 2008 interim, the DPS proposal was reviewed, revised and endorsed by the New Mexico Sex Offender Management Board. This bill was introduced in the 2009 Regular Session as Senate Bill 502 and was amended. THE BILL in its current form reflects those amendments.

The AOG amplifies:

The bill reconciles two different amendments to NMSA 1978, § 29-11A-3. In 2007, Section 29-11A-3 was amended to include child solicitation by electronic communication device as a sex offense, 2007 N.M. Laws, ch. 68, § 1, but based on the compilation rules set out in NMSA 1978, § 12-1-8 (1977), this amendment is not reflected in the current compilation of the statute due to a second amendment to Section 29-11A-3 approved the same day, 2007 N.M. Laws, ch. 69, § 5. Although the judiciary would likely give effect to reconcilable portions of both amendments, see State v. Smith, 2004-NMSC-032, 136 N.M. 372, 98 P.3d 1022, the bill resolves any potential conflict between the 2007 amendments and further assures a complete version of the statute in its compiled form.

TECHNICAL ISSUES

The AGO identifies the following technical issue:

The proposed amendment to Section 29-11A-3 includes human trafficking of a victim under sixteen years of age “for a sexual purpose.” The quoted language may be in response to the overbreadth discussion in ACLU v. City of Albuquerque, 2006-NMCA-078, ¶¶ 24-25, 139 N.M. 761, 137 P.3d 1215. It may be more clear to refer directly to the statutory language of “commercial sexual activity” in NMSA 1978, § 30-52-1 (2008), or to the crime as provided in Section 30-52-1(A) (2), instead of “for a sexual purpose”.

It is noted that the proposed addition of human trafficking as a sex offense applies only to victims under sixteen years of age, even though human trafficking for commercial sexual activity applies to victims of all ages and there is a specific alternative of human trafficking, Section 30-52-1(A) (2), for causing any child under the age of eighteen to engage in commercial sexual activity. All other crimes defined as a sex offense in Section 29-11A-3 based on the age of the victim refer to victims under the age of eighteen.

MW/mew