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FISCAL IMPACT REPORT

02/25/13

ORIGINAL DATE 02/27/13

SPONSOR Chasey **LAST UPDATED** 03/14/13 **HB** 556/aHJC/aSJC

SHORT TITLE Coercion for Prostitution Under 18 **SB** _____

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

HB 556 is related to the following:

- SB 473 - Protection Orders for Minors
- SB 524 - Electronic and Online Prostitution
- HB 295 - Electronic and Online Promotion of Prostitution
- HB 196 - Increased penalties for Prostitution
- HB 457 - Increased penalties for Crimes Against Children

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Children Youth and Families Department (CYFD)
- Attorney General’s Office (AGO)
- Administrative Office of the District Attorneys (AODA)
- Administrative Office of the Courts (AOC)
- Public Defender Department (PDD)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee Amendment to House Bill 556 changes the definition of prostitution by removing the words “or offering to engage in” so that the new definition of prostitution is limited to “knowingly engaging in a sexual act for hire”.

Synopsis of HJC Amendment

House Judiciary Committee Amendment to House Bill 556 adds “under the age of eighteen years” to three sections of the Safe Harbor Act allowing a person under the age of eighteen arrested for prostitution to receive translation services, consult with a victim’s advocate, and receive information on social services available to victims of crime. The original bill would have allowed any person arrested for prostitution to receive these services. The amendment also strikes through a repetitive section of the original bill on page 2, line 17.

Synopsis of Original Bill

House Bill 556 requires that a person arrested for prostitution under the age of 18 must have a victim advocate or attorney present before questioning. Law enforcement shall make a reasonable effort to have a parent or adult member of the child’s family present before questioning begins. If the arrested person needs a translator, questioning shall not start until the translator is present. Anyone arrested for prostitution pursuant to Section 30-9-2 shall be informed of the right to consult with a victim advocate and to be informed of “social services available to victims of crime”. The final section of the new act defines a ‘victim advocate’ as a person from a state or nonprofit agency with experience in providing services for victims of crime.

The substantive amendment in Section 30-9-2 NMSA 1978 is the new sub-section (C) which states there will be a presumption that if a “person under 18 is arrested for prostitution that the person was coerced into committing the offense by another person and is a victim of sexual exploitation of children by prostitution pursuant to Section 30-6A-4 NMSA 1978”.

FISCAL IMPLICATIONS

The Administrative Office of the Courts (AOC) stated that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary 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

The bill requires reasonable attempts be made to have a parent or adult family member present before a child is interrogated, but does not address potential circumstances where a child’s parent or adult family member should not be contacted. There are circumstances where it would be detrimental or unreasonable to contact a parent or adult family member.

The Public Defender Department (PDD) stated that the bill requires “a victim advocate or attorney” to be present during the interrogation of a child suspected of prostitution. It does not say an attorney representing the child. That section of the bill does not provide greater legal protections for a child suspect. A “victim advocate” might well be a member of the prosecution team. See State of New Mexico, ex rel. Brandenburg v. Blackmer, 2005-NMSC-008, 137 N.M. 258, 110 P.3d 66 (holding that victim advocates are part of the prosecution team). If the attorney mentioned is intended to be representing the child suspected of prostitution, this needs to be made more clear.

The Attorney General's Office (AGO) stated the following:

This bill articulates society's interest and willingness to provide legal aid and social services to children who are exploited. However, without amendments, this law could actually benefit the exploiters ("pimps") because the child is less likely to be detained, charged or prosecuted, and therefore available to return to the streets quickly. It also encourages exploiters, who will understand that child prostitutes are unlikely to be charged like adults, to hire more young prostitutes.

In light of the significant dangers a child could face, such as violent retaliation, if the child revealed the name and other information about the exploiter, it is less likely that a child who has been exploited will reveal information that allows law enforcement to follow up on the criminal enterprise that ensnared the child in the first place. In addition, the child may have limited information about the exploiter. (Mr. X who has a disposable cell phone and an ever changing phone number.) In an online prostitution enterprise, the child may never meet any of the organizers or promoters of the enterprise.

ALTERNATIVES

The AGO suggested the following amendments:

1. Provide long-term social and crisis services for exploited children in order to protect them from retaliation, and to discourage returning to the criminal enterprise.
2. Encourage the exploited child to reveal information about the exploiters and/or the criminal enterprise that led to the exploitation.
3. Provide legal protection for exploited children who cooperate with law enforcement.

EC/svb:blm