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FISCAL IMPACT REPORT

SPONSOR Dixon/Matthews
LAST UPDATED _____
ORIGINAL DATE 02/01/2024
SHORT TITLE Sex Offender Registration & Federal Law
BILL NUMBER House Bill 282
ANALYST Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Corrections Department	Indeterminate but minimal	At least \$26.6	At least \$26.6	At least \$53.2	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)

Agency Analysis was Solicited but Not Received From
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Attorney General (NMAG)
 Department of Public Safety (DPS)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of House Bill 282

House Bill 282 (HB282) amends Section 29-11A-2 NMSA 1978, the “Sex Offender Registration and Notification Act (SORNA).”

Key amendments include:

The purpose of SORNA is expanded to comply with the federal Adam Walsh Child

Protection and Safety Act of 2006.¹

Definitions are updated, including the addition of "juvenile sex offender" and broadening of "out-of-state registrant."

Changes in the registration process, including registration time frames and in-person verification requirements, are altered based on the offender's tier.

The definition of "sex offense" is expanded to include additional offenses and conspiracy to commit these offenses.

The bill categorizes sex offenses into three tiers, each with specific registration and verification requirements.

Amendments to public access and community notification regarding sex offender registration information.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have moderate fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB282 is anticipated to increase the number of incarcerated individuals and increase the time they spend incarcerated. Overall, this analysis estimates HB282 will result in additional incarceration costs of at least \$26.6 thousand per year under the revised statute based on the costs to incarcerate a single inmate.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials or increased costs to law enforcement to investigate and arrest individuals for the new and expanded crimes under HB282, are not included in this analysis but could be significant.

This analysis does not include the potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. The certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

SIGNIFICANT ISSUES

¹ https://www.justice.gov/archive/olp/pdf/adam_walsh_act.pdf

The analysis of House Bill 282 by the Sentencing Commission and Corrections Department identifies several issues, each with its own implications:

Increased Violations and Costs: The bill introduces stricter registration and verification requirements for sex offenders. This could unintentionally lead to an increase in the number of registration violations. Such a rise in non-compliance may result in more offenders facing incarceration or extended probation or parole. This scenario could escalate correctional costs and resource demands, straining the system.

Overlap in Offense Definitions: The bill creates an overlap in the definitions of Tier 1 and Tier 2 sex offenses, particularly concerning the sexual exploitation of children. This ambiguity may lead to challenges in accurately categorizing offenses. It could result in inconsistencies in how offenders are treated under the law, potentially impacting fairness and effectiveness in managing sex offenders.

TECHNICAL ISSUES

The bill contains some technical issues, such as ambiguous terminology. For example, the repeated use of "department of public safety" in both the current and proposed texts could lead to confusion. Clarity in legislative language is crucial for effective enforcement and administration of the law. Ambiguities can hinder the application of the law and may lead to legal challenges. Analysis provided by the Corrections Department (NMCD) states:

“Both the existing statutory text and some of the proposed new text use the term “department of public safety,” but the “department of public safety” is defined as “department” in the definition section of the Sex Offender Registration Act. NMSA 1978, § 29-11A-3(C).

The definitions of “tier 1 sex offense” and “tier 2 sex offense” overlap regarding sexual exploitation of children. Tier 1 references NMSA 1978, § 30-6A-3(A) and tier 2 references NMSA 1978, § 30-6A-3, which would include subsection A.

The first sentence of the proposed new subsection (E) in NMSA 1978, § 29-11A-4 may be superfluous because of the changes in the new subsection (D).”

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