FISCAL IMPACT REPORT

SPONSOR: HJC   DATE TYPED: 03/11/03   HB   CS/170/aHFl#1

SHORT TITLE: Enticement of a Child   SB

                                                        ANALYST: Fox-Young

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			$0.1 Significant	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From:
Association of District Attorneys (AODA)
Attorney General (AG)
Children, Youth and Families Department (CYFD)
Administrative Office of the Courts (AOC)
Corrections Department (CD)

SUMMARY

Synopsis of House Floor Amendment

The House Floor Amendment to the House Judiciary Committee Substitute for House Bill 170 strikes the provision that an individual must have the "intent to commit an act that would constitute a crime under Chapter 30, Article 2, 3, 3A, 4, 5, 6 or 6A NMSA 1978."

Significant Issues

The AG indicates that without the element of intent, the bill may pose problems of overbreadth and recommends including a form of malevolent intent as an element of the crime.

Synopsis of HJC Substitute

The HJC substitute for House Bill 170 amends Section 30-9-1, revising the elements of the criminal offense "enticement of a child."

The bill extends the definition of child enticement to include "a person enticing, persuading or attempting to persuade a child to enter a vehicle, building, room or secluded place with the intent to confine, restrain or transport the child without the consent of the child's parent or guardian and with the knowledge that the person has no lawful authority to do so and with intent to commit an act that would constitute a crime under Chapter 30, Article 2, 3, 3A, 4, 5, 6 or 6A NMSA 1978." These articles are Homicide, Assault and Battery, Harassment and Stalking, Kidnapping, Abortion, Crimes Against Children and Dependents, and Sexual Exploitation of Children.

The bill increases the penalty for child enticement from a misdemeanor to a fourth-degree felony.

Significant Issues

The Attorney General (AG) notes the term "lawful authority" may present some ambiguity. An adult who transports a child away from a dangerous situation or who transports a child with good intentions and no malevolent purpose might be viewed as a fourth-degree felon under the proposed provision, if he or she lacks "lawful authority."

Additionally, the AG notes that crimes of false imprisonment and kidnapping may apply to a number of acts that fall under the new definitional category.

FISCAL IMPLICATIONS

Increased penalties will drive up costs in judicial and correctional agencies. Courts, district attorneys and public defenders will likely see workload increases with the passage of this bill, and the AG reports a potential increase in the appellate caseload as well.

Increasing the penalty for child enticement from a misdemeanor to a felony will likely increase the number of offenders sentenced to incarceration or probationary supervision, at the same time decreasing the number sentenced to county jails or lesser supervision.

The Corrections Department (CD) estimates an annual increase of five to twenty offenders sentenced to CD prisons or probationary supervision as a result of this bill. Ultimately, CD will be unable to absorb the additional costs.

TECHNICAL ISSUES

It is not clear why Article 5, Abortion, is included in the list of crimes. Article 5A, Partial-Birth Abortion Ban, is not included.

JCF/ls:sb:yr