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FISCAL IMPACT REPORT

ORIGINAL DATE 2/23/07

SPONSOR B Lujan LAST UPDATED 3/7/07 HB 1181/aHJC

SHORT TITLE Sexual Offense Victim Polygraph Tests SB _____

ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1			Non Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Public Defender Department (PDD)
 Sentencing Commission (SC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment modifies the requirement that a victim of a criminal offense must submit to a polygraph test or other examination by requiring that the examination should be credibility examinations.

Synopsis of Original Bill

House Bill 1181 prohibits a law enforcement officer or prosecuting attorney from requesting or requiring a victim of a criminal offense as provided in Sections 30-9-11 through 30-9-13 to submit to a polygraph test or other examination as a condition for investigating a complaint or offense. The bill also prohibits the use of the victim's refusal to submit to a test or examination as grounds for not investigating the complaint.

The following offenses are covered by the HB 1181 prohibitions:

Section 30-9-11 NMSA 1978 = criminal sexual penetration
 Section 30-9-12 NMSA 1978 = criminal sexual contact

Section 30-9-13 NMSA 1978 = criminal sexual contact of a minor

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

DPS notes the investigation of a sexual offense becomes even more difficult without physical evidence, but the victim's rights under Article II Sec. 24 of the New Mexico Constitution must be guaranteed. Polygraph examinations done by the New Mexico State Police do not allow a polygraph examiner to conduct an examination on the victim due to two paramount reasons, the re-victimization of the victim during a polygraph and the high potential of receiving a false negative even if the victim is honest during the exam.

TECHNICAL ISSUES

The AOC notes HB 1181 does not contain a definition of "examination." If the prohibition extends to all possible examinations then perhaps a definition is unnecessary.

OTHER SUBSTANTIVE ISSUES

SC provided the following:

- Many states have already passed legislation to prohibit or limit polygraph testing of sex crimes victims, including Texas, California, and Illinois.
- Though there is no evidence that victims of sex crimes are less truthful than victims of other violent crimes, some feel that sex crimes victims are routinely treated with higher degrees of suspicion and doubt.
- The Violence Against Women Act (VAWA) established federal grant programs to assist states, local governments, and other entities in preventing and responding to crimes such as domestic violence and sexual assault. One of the provisions in the 2005 VAWA requires grant applicants to certify that their laws, policies, or practices ensure that law enforcement, prosecutors, and other government officials do not ask or require a victim of a sex offense to take a polygraph examination as a condition to proceeding with an investigation of that offense.

DW/mt