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FISCAL IMPACT REPORT

ORIGINAL DATE 1/16/08
 LAST UPDATED 2/13/08 HB _____

SPONSOR Garcia, M.J.

SHORT TITLE Create Offense of Human Trafficking SB 71/aSJC/aSFC/aHJC

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY08	FY09		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)
 NM Sentencing Commission (NMSC)
 Attorney General's Office (AGO)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 71 strikes SJC amendments 1 through 15 that added language regarding coordination with state and local law enforcement and documentation assistance for victims, as well as a new provision for civil action.

Synopsis of SFC Amendment

The Senate Finance Committee amendment to SJC amendment strikes the appropriation in its entirety.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment makes the following changes.

Section 1: Adds new language requiring the attorney general to coordinate state and local law enforcement to provide victims who give law enforcement information regarding a perpetrator of human trafficking protection from retaliatory action. Adds language requiring the prosecuting authority to take all reasonable steps within its authority to provide a human trafficking victim with necessary documentation and assistance for adjustment of the victim's immigrant status.

Section 2: New provision granting victims the right to bring a civil action for civil damages with a statute of limitations of ten years from the time the trafficking incident occurred or when the victim attains eighteen years of age if the victim was a minor when the incident occurred.

Section 3: Adds human trafficking to list of enumerated offenses to which the Crime Victims Reparation Act applies for reparation related to the criminal offense. Adds the provision that if a human trafficking victim advocate or victim advocate from the district attorney's office raises the issue of the victim's ability to cooperate the Court shall make the determination on the victim's ability to cooperate. Adds 'child care', 'legal assistance', and 'state funded cash assistance' to state benefits and services eligible to victims of human trafficking that cooperate in the investigation or prosecution of the person charged with the crime of human trafficking. Lists human services department as alternative to children youth and families department to administer state benefits. Defines a human trafficking victim advocate as a person provided by the human services department through a nonprofit agency with expertise in providing services for victims of crime. Specifies one member from law enforcement from each geographical region to participate in the task force and specifies two representatives from organizations that provide services to victims of human trafficking to participate in the task force. Adds additional duties to the task force such as collect and organize data on the interrelationship between human trafficking and disabilities.

Divides the appropriation amount from \$250,000 to children youth and family to \$125,000 to children youth and family, and \$125,000 to human services department.

Synopsis of Original Bill

Senate Bill 71, creating a new criminal offense known as human trafficking; providing penalties; establishing the task force to combat human trafficking, appropriates \$82 thousand from the GENERAL FUND to the attorney general for per diem and mileage for the public members of the task force to combat human trafficking, training for law enforcement personnel and victims services providers, a media awareness campaign and other expenditures for the task force and appropriates \$250 thousand from the GENERAL FUND to Children, Youth and Families Department for the purpose of providing benefits and services to human trafficking victims.

FISCAL IMPLICATIONS

Corrections Department acknowledges that new felony convictions are likely to increase its costs moderately with additions to the inmate population and probation/parole caseloads. The bill is unlikely to cause a moderate or substantial number of convictions, but it is always difficult to predict the effect of any new crime bill with any certainty.

SIGNIFICANT ISSUES

The Attorney General's Office notes that the amendments provide substantial protection and state benefits to victims of human trafficking. In addition to adding human trafficking to the list of enumerated offenses which provide reparation to crime victims, victims will also receive state general assistance benefits which include cash assistance. Services granted by Crime Victims Reparation may duplicate proposed state benefits and services. Creating a civil remedy for human trafficking victims pertains to civil liability and is more appropriate for separate civil legislation.

The AGO also adds however that the amendment as currently drafted is unclear as to whether the Court, as in other cases where a witness is subpoenaed, will determine the victim's availability to testify or whether the Court will make a determination on a victim's ability to cooperate in general with the case.

Administrative Office of the District Attorneys cites the most significant factor of the legislation is that it will allow the State of New Mexico to criminally punish those individuals who exploit their fellow humans through a modern version of slavery or involuntary servitude, by creating a specific crime defining the offense. In addition, the legislation provides for an escalating degree of possible punishment depending on whether the victim was a teenager under the age of 16 or a child under the age of 13.

It also adds that it is quite significant that (1) the law provides that prosecution for the crime of human trafficking will not prevent prosecutors from charging, proving, and asking the Courts to punish other criminal behavior committed in addition to human trafficking, (2) victims of human trafficking may not be charged as accessories and (3) those convicted of human trafficking will owe their victims specific kinds of restitution such as the value of their forced labor.

The Attorney General's Office explains that this bill is different from the 2007 bill introduced due to recommendations made at the Courts, Corrections and Justice Committee interim hearing in Taos in August. Revisions include no step penalties dependant upon age, removed forfeiture provisions, and no enhancement for ten or more victims. The bill makes it a third degree felony to use force, fraud or coercion to subject a person to labor, services or commercial sexual activity or to benefit financially from labor, services or commercial sexual activity, knowing force, fraud or coercion was used. Force, fraud or coercion is not required where a person under 18 is engaging in commercial sexual activity. It also adds a second degree felony when the human trafficking results in injury to a person and provides restitution and a task force consisting of state federal, local law enforcement as well as victim service providers.

PERFORMANCE IMPLICATIONS

AGO explains that the bill requires prosecuting authority to provide victim assistance with federal immigration authorities and agencies familiar with TVPA. Victim advocates in prosecuting agencies will require training with federal entities. Children Youth and Families Department or human services will be required to administer general assistance benefits to human trafficking victims pending federal assistance.

The Department of Public Safety notes that human smuggling is increasingly committed by organized, sophisticated criminal groups, and is the fastest growing source of profits for organized criminal enterprises worldwide. It adds that once officers have advanced training and become more accustomed to identifying this crime, current resources could handle the workload.

Corrections Department is concerned that if there were more than just a few additional convictions as a result of this bill that it would impair its ability to perform prison-related and probation/parole supervision services with current levels of staffing.

Administrative Office of the District Attorneys recognizes that as with any new law, there will be a somewhat front-loaded learning process that necessarily carries with it performance implications for law enforcement and prosecutors. Both sets of professionals charged with enforcing the law and investigating reported violations of it will need to get up-to-speed in a somewhat unfamiliar area.

ALTERNATIVES

One alternative to the legislation overall would be to have the Task Force go forward *prior to* the enactment of a special statute criminalizing human trafficking, in order to assess the real extent and characteristics of the problem in New Mexico. How pervasive is it? What forms does it take; e.g., sweatshop-type labor conditions, sexual exploitation, and so on...? The only potential advantage of such an approach would be the ability to better tailor the criminal statute to the specific problems New Mexico is encountering in this area. The risk is that in studying the problem first, and then enacting a specific criminal statute, the state risks mounting an inadequate response to terrible crimes should they begin to become more prevalent in New Mexico.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The consequence of not enacting the bill is that those human trafficking cases that do occur in New Mexico in the absence of such legislation will either need to be pursued as a different category of crime, which is very difficult, if not impossible, or referred to the federal government for prosecution, which is increasingly impractical given the resources being tied up by other types of federal investigation and prosecution (i.e.; terrorism, public corruption). If that happens, New Mexico could conceivably risk becoming a more heavily traveled thoroughfare and/or haven for those who engage in human trafficking.

In a report published by the National Conference of State Legislatures, “A Review of State Immigration Legislation in 2005,” the following summary is presented:

Trafficking (9 bills: 9 enacted): 9 measures were enacted, adding law enforcement authority and penalties on traffickers, compensation to victims, and studies.

Arizona gave local law enforcement the ability to arrest smugglers and to penalize human trafficking. (S. 1372)

Colorado created a task force on human trafficking (H.B. 1143).

Idaho authorized an interim study; it passed the House and Senate in April and does not require gubernatorial action. (H.C.R. 18)

Illinois criminalized involuntary servitude (including sexual servitude of minors) and human trafficking and ensures that victims are referred to appropriate state and federal services (H.B. 1469).

Kansas criminalized human trafficking as a class 2 felony and aggravated trafficking as a class 1 felony (S.B. 72).

Louisiana criminalized human trafficking and established penalties including fines and imprisonment (H.B. 56).

Missouri created standards for international “matchmaking” services and classified the provision of incorrect information as a class D felony (H.B. 353)

New Jersey criminalized human trafficking and authorizes victim compensation (A. 2730).

Washington created a working group to develop written protocols for the delivery of services to human trafficking victims. (H.B. 5127)
(Note: in 2003-2004 WA, TX, FL, MO and CT enacted laws.)

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