

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/11

SPONSOR King LAST UPDATED 03/09/11 HB 253/aHJC/aHFL#1

SHORT TITLE Prohibit Child Porn Duplication for Evidence SB \_\_\_\_\_

ANALYST Aledo

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>		*See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of House Floor #1 Amendment

The House Floor Amendment to House Bill 253 deletes the House Judiciary Committee Amendment requiring the visual or print medium to remain in the care, custody and care of either the state of the court. The Floor amendment also provides for duplication of the visual or print medium only if the court upon a finding of good cause issues an order to allow duplication.

#### Synopsis of HJC Amendment

The House Judiciary Committee Amendment to House Bill 253 removes the mandatory language. The bill now indicates that the visual or print medium “may” remain in the care, custody and care of either the state of the court. The HJC amendment also requires a “hearing of the order of the court” prior to evidence being made available to the defendant and the defendant’s experts and attorneys.

Synopsis of Original Bill

House Bill 253 adds a new section to the Sexual Exploitation of Children Act. The bill mandates that any visual or print medium that may be deemed child pornography must stay in the care, custody and control of the state or court. The bill also provides that the state must make all such evidence reasonably available to the defendant and the defendant's experts and attorneys to inspect and examine the evidence at a government facility. HB 253 prohibits the court from allowing a defendant to copy, photograph, duplicate or otherwise reproduce such material.

**FISCAL IMPLICATIONS**

The Department of Public Safety affirms that they currently have the equipment and space available to meet the requirement to allow defense access to the effected images. Additionally, the soon to be completed Regional Computer Forensic Lab (RCFL) will have dedicated computers and space for this requirement.

According to the Administrative Office of the Courts, 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. The cost of the possible increase in hearings is unknown at this time. If the courts are required to have care, custody and control over this evidence, there will be some cost for that requirement which is unknown at this time.

**SIGNIFICANT ISSUES**

The Public Defender Department has the following concern: As written, this bill says the state shall make all such evidence reasonably available to defense attorneys to inspect and examine the exhibits at a government facility. There will be times when experts need to review the materials and some experts might not be in New Mexico and able to travel to a local government facility.

The Administrative Office of the Courts states the court will need to develop rules and processes on how to keep this type of evidence secure and in the court's care, custody and control.

**PERFORMANCE IMPLICATIONS**

The Public Defender Department notes that it will be more difficult to try these cases without the same access as attorneys have to other exhibits, but the benefits outweigh the difficulties as long as provisions are made for expert review.

According to the AOC, this bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

**AMENDMENTS**

The Public Defender Department suggests including language for how experts in other states might be able to access the materials. PDD recommends providing for expert viewing of materials at a government facility local to the expert.