

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

SPONSOR McSorley ORIGINAL DATE 02/04/11
LAST UPDATED _____ HB _____
SHORT TITLE Sex Offender Residence Restrictions SB 184
ANALYST Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Department of Public Safety (DPS)
New Mexico Corrections Department (NMCD)
Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 184 enacts a new section of the Sex Offender Registration and Notification Act (SORNA) to prohibit any city, county, municipality or other political subdivision of the state from imposing distance restrictions on a registered sex offender's place of residence or create an exclusionary zone for sex offenders. The bill permits the imposition of distance restrictions for a sex offender's residence as a condition of probation or parole.

FISCAL IMPLICATIONS

If the Probation and Parole Division (PPD) has to implement residency restrictions on more supervised sex offenders as a result of this bill, there may be more legal challenges to those restrictions. NMCD reports that the Department has prevailed in several such cases to date. NMCD further reports that it should be able to absorb this additional administrative burden with existing staff.

SIGNIFICANT ISSUES

The AGO maintains that the bill is consistent with SORNA and the registration requirements imposed.

The bill recognizes the ability of the PPD to impose restrictions as conditions of probation and parole.

The Sex Offender Management Board (SOMB) has taken a written position that it does not support residency restriction in any form. The SOMB concludes that it is not in the best interest of New Mexico to place legal restrictions on where convicted sex offenders may reside. The SOMB believes that offenders are safer when they have jobs, homes, friends and family, and access to treatment. Imposing blanket restrictions has had a destabilizing impact in every jurisdiction where it has been implemented and most experts believe that it is dangerous and counterproductive.

NMCD claims that without local ordinances in place, judges are inclined to not allow the Department to impose restrictions on probationers.

PERFORMANCE IMPLICATIONS

The mission of the SOMB is to develop and recommend to the New Mexico Sentencing Commission best practices in the management and treatment of adult and juvenile sex offenders and to protect current and prevent future victims of sex offenses.

The AG comments that the bill does not address employment, school, or other circumstances for sex offenders.

ADMINISTRATIVE IMPLICATIONS

NMCD asserts that the bill's use of the term "in appropriate cases" when referring to the imposition of distance restrictions, may be used by certain sex offenders to argue that it is not appropriate for them to have such restrictions imposed. New Mexico statutory and case law already contains the standards or requirements for imposing supervision conditions on any offender, and sex offenders may attempt to use this term to narrow or lessen these standards.

OTHER SUBSTANTIVE ISSUES

NMCD notes that some studies suggest that local government-imposed geographic restrictions for sex offenders are not effective in protecting public safety.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AGO states the possibility that local governmental entities will impose exclusionary zones or other restrictions which are inconsistent and subject to challenge. A uniform and consistent law applicable throughout the State may avoid possible challenges. Recently, Albuquerque enacted a stricter sex offender law resulting in disparate application and a constitutional challenge because it was broader than SORNA. See ACLU v. City of Albuquerque 2006-NMCA-078, 139 N.M. 761, 137 P.3d 1215.

AHO/bym:mew