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FISCAL IMPACT REPORT

ORIGINAL DATE 02/21/11

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE No Notice Before Prosecution for Sex Offense SB 352

ANALYST Aledo

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General's Office (AGO)
- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

Senate Bill 352 amends portions of the act relating to Sexually Oriented Material Harmful to Minors to clarify that child solicitation by electronic communication device and criminal sexual communication with a child by means of an electronic communication device are exempt from the notice provision of Section 30-37-4 which requires district attorneys to provide notice that certain material is harmful to children before prosecution for certain sex offenses against children.

The bill also removes the crime of attempted child solicitation by electronic communication device from the enumerated sex offenses that require registration as a sex offender.

FISCAL IMPLICATIONS

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. Any additional fiscal impact on the judiciary would be

proportional to any increased filing of actions pursuant to the proposed amendment relieving district attorneys of the duty of establishing that the defendant had received actual or constructive notice of a determination that certain electronic images are obscene or constitute improper solicitations, or alternatively, to the assertion of defenses based on constitutional challenges. AOC is currently working on possible parameters to measure resulting case increase.

SIGNIFICANT ISSUES

Comments from the Attorney General's Office:

Child solicitation; Sex offender registration requirement:

Laws 2007, Chp 68, Section 1 added Sec 29-11A-3(E)(11) "child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978" to the definition of "sex offense", the conviction of which would trigger the registration requirement under the Sex Offender Registration and Notification Act. Subsequently, during the same session, Laws 2007, Chp 69, Section 5 also amended the definition of "sex offense" and did not include child solicitation by electronic communication device, and the "sex offense" definition is set out as amended by the latter version of the law. While the Legislature intended the conviction of child solicitation to trigger the registration requirement, due to the passing of the latter version that omitted it, it was not codified. This bill corrects that omission.

Comments from the Administrative Office of the Courts:

The validity of state statutes and administrative regulations regulating internet communications are often challenged by defendants (or by internet providers) as violations the First, Fifth and Fourteenth Amendments to the United States Constitution. The prior determination of harmful materials, as well as proof of notice to a defendant of that determination, required by Section 30-37-4 are aimed at defeating such constitutional challenges. The legislative findings and declaration of the purpose of the act relating to Sexually Oriented Material Harmful to Minors states that "The legislature finds that children do not have the judgment necessary to protect themselves from harm and that the legislature has the inherent power to control commercial conduct within this state for the protection of minors in a manner that reaches beyond the scope of its authority to protect adults." By removing the requirement of notice for sexual offenses involving electronic devices, SB 352 may open the door to constitutional challenges to such inherent power. There is an implication that such offenses are by nature different from print or other media and that obscenity is more self-evident and instant in an electronic format. Also, the specific definition of "intimate parts" may supply the required specificity to avoid constitutional challenge.

MCA/svb