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FISCAL IMPACT REPORT

ORIGINAL DATE 02/10/12
LAST UPDATED _____ **HB** 179

SPONSOR Herrell

SHORT TITLE Sex Offender Registration Changes **SB** _____

ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY12	FY13	FY14		
	(\$250.0)*	(\$250.0)*	Recurring	State General Fund and Local Governments

(Parenthesis () Indicate Revenue Decreases)

*The DPS estimates that local law enforcement around the state will lose \$250,000 each year if this bill is not enacted. See Fiscal Implications below.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	Indeterminate*	Indeterminate*	Indeterminate*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Conflicts with SB 236

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 Parole Board (PB)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

Other Responses

Reform Sex Offender Laws New Mexico (RSOL New Mexico)

SUMMARY

Synopsis of Bill

House Bill 179 revises and adds to the Sexual Offender Registration and Notification Act (SORNA). It expands the definition of a sex offender (SO) to include a person convicted of a sex offense in other countries if those convictions meet certain standards, including a fair trial. It adds to the information a SO must provide, including the address of each and every place where a SO habitually lives (at least 30 days in any 365 day period), current information on employment, every offense of which the SO was convicted, the date and place of every arrest and conviction, identifying information the SO uses in internet communications or postings or on social networking sites, telephone numbers, professional licenses, license plate numbers, the name and address of any school or institution of higher learning the SO is attending, copies of passports and immigration documents, and palm prints on an annual basis. It reduces the time to notify the sheriff when a SO changes residence, living arrangements or temporary location, enrolls in an institution of higher learning within the state, begins or changes employment from ten days to three days after the occurrence of the triggering event.

HB 179 clarifies that kidnapping and false imprisonment crimes are sex offenses requiring registration only if those crimes are committed with the intent to inflict a sexual offense. It also adds new offenses as sex offenses requiring registration: patronizing, promoting, and accepting earnings of a prostitute if the person believed to be a prostitute, or if the victim or the person engaged in prostitution is under eighteen; voyeurism, human trafficking for a sexual purpose when the victim is under 16, criminal sexual communication with a child, and conspiracy to commit any of these sex offenses.

HB 179 creates three tiers of sex offenses, which determine the frequency and duration of registration and the period of retention by DPS of registration information:

- Tier I sex offenses are: false imprisonment with intent to inflict a sexual offense when the victim is less than eighteen; aggravated indecent exposure, voyeurism, and any attempt to commit or conspiracy to commit these sex offenses. A SO convicted of a Tier I offense must annually renew registration for fifteen years, unless a SO is convicted of a second or subsequent sex offense, after which the SO must renew his registration every 90 days for the remainder of the SO's life. The DPS must retain that registration information for fifteen years following conviction or release from prison, probation or parole, whichever occurs later, unless a SO is convicted of a second or subsequent sex offense, in which case DPS must retain information for the remainder of the SO's life;
- Tier II sex offenses are: enticement of a child; prostitution offenses; sexual exploitation of children by prostitution; criminal sexual penetration in the fourth degree when the victim is sixteen or older; incest, when the victim at least sixteen but under eighteen; criminal sexual communication with a child; human trafficking for a sexual purpose when the victim is under sixteen; child solicitation by electronic communication device; solicitation to commit criminal sexual contact of a minor; and attempts and conspiracies to commit any of these sex offenses. A SO convicted of a Tier II offense must renew registration every six months for twenty-five years unless a SO is convicted of a second or subsequent sex offense, after which the SO must renew his registration every 90 days for the

remainder of his life. The DPS must retain that registration information for twenty-five years following conviction or release from prison, probation or parole, whichever occurs later, unless a SO is convicted of a second or subsequent sex offense, in which case DPS must retain information for the remainder of the SO's life; and

- Tier III sex offenses are: kidnapping with intent to inflict a sexual offense when the victim is less than eighteen; sexual exploitation of children; aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree; criminal sexual penetration in the fourth degree when the victim is under 16; criminal sexual contact in the fourth degree and of a minor; incest when the victim is under sixteen; and any attempt or conspiracy to commit any of these sex offenses. An SO convicted of a Tier III offense must renew registration at least every ninety days for the remainder of the SO's natural life. The DPS must retain that registration information for the remainder of the SO's life.

Additionally, HB 179 requires county sheriffs to provide Tier II and III SO registration information to the appropriate district attorney, and if the SO resides within a municipality, to the municipality's chief law enforcer officer. It also expands the SOs listed on the DPS website to include all SOs convicted of Tier II and Tier III sex offenses and specifies the information the DPS must provide on its website: the SO's legal name and any aliases; the SO's current address and any other address at which the SO habitually lives; the address of the SO's place of employment if that employment requires the SO to have direct contact with children; every sex offense for which the SO has been convicted; the SO's professional licenses; the license plate or other identifying description of vehicles owned or primarily operated by the SO, including boats and planes; the SO's photograph; a physical description of the SO; and the SO's date of birth.

The bill applies to any SO convicted of a sex offense on or after July 1, 2005, as well as an SO convicted of a sex offense prior to that date if the SO was still incarcerated, or on probation or parole for commission of that offense.

The effective date of the bill, if enacted, is July 1, 2012.

FISCAL IMPLICATIONS

The DPS reports that if this bill is not enacted into law, New Mexico will lose 10% of the JAG funding each year until the state comes into compliance with the federal Adam Walsh amendments to the Child Protection Act. Based on last year's funding, this will be approximately \$250,000 for law enforcement agencies around the state. This projected loss of federal funding is reflected in the Revenue table above.

The PDD anticipates a substantial increase in clients charged with failure to register, a fourth degree felony, given the new three (reduced from ten) day registration period and the new registration requirements based on foreign judgments, as well as the seven new sex offenses which would require registration. In such an event, the courts would face a similar increase in cases on their dockets. The NMCD, however, believes at least as to the shortened reporting period, it is likely that the vast majority of SOs will quickly adjust to and comply with that change and thus will not result in a significant number of new convictions. The DPS reports that its Law Enforcement Records Bureau SORNA unit already manages and maintains the SORNA registry, and that the additional crimes being added to the list of sex offenses requiring

registration are minimal in comparison to the weekly incoming data entry. In light of these differing analyses, the table shown above shows the fiscal impact as indeterminate.

SIGNIFICANT ISSUES

The PB, the AGO, the NMCD, and the DPS all report that HB 179 is intended to bring SORNA into compliance with federal standards for sex offender registration.

Several agencies have called attention to anticipated problems that may arise as a result of the new provisions. The PDD calls attention to the registration requirements for offenders who were convicted of sex offenses in foreign jurisdictions and the problems that will may arise determining how and whether the State Department concluded a fair trial was observed in the underlying proceedings.

The AGO points out that the new requirement that false imprisonment be committed with intent to inflict a sexual offense in order to qualify as a sex offense raises an issue of proof. Since the existing crime of false imprisonment does not contain that intent as an essential element, the AGO asks when a determination of the existence of that intent would occur, and whether it would need to be established at trial with proof beyond a reasonable doubt. If so, that section of the Criminal Code that defines the crime of false imprisonment (NMSA 1978, section 30-4-3) would need to be amended. In a similar vein, the crime of kidnapping already provides that intent to inflict a sexual offense is one type of intent sufficient to convict a person of kidnapping (see NMSA 1978, section 30-41(A)(4)), but including the reference to that particular subsection—(A)(4)—might further clarify legislative intent as to that particular sex offense.

PERFORMANCE IMPLICATIONS

The courts participate in performance-based budgeting. This bill may impact district court measures in the areas of cases disposed of as a percent of cases filed and percent change in case filings by case type. The PDD notes that additional work will result from the addition of foreign judgments as a basis for registration, including additional training on determining the applicability of those judgments, along with that attributable to the seven new sex offenses.

CONFLICT

This bill conflicts with SB 236, Sex Offender Registration Changes. The differences in SB 236 include: switches registration duties from the county sheriff to the state police; limits the new sex offenses of patronizing prostitutes, promoting prostitution, and accepting earnings of a prostitute to offenses involving the other person or victim be under sixteen; does not include voyeurism as a sex offense but adds sex trafficking of children by force, misleading domain names and misleading words or digital images on the internet, travel with intent to engage in illicit sexual conduct, engaging in illicit sexual conduct in foreign places, failure to file a factual statement about an alien individual, and use of interstate facilities to transmit information about a minor as sex offenses; in some instances set differing dates of applicability; includes different sex offenses in different tiers; requires registration within three business days of a triggering event; requires different information be provided in the initial registration; requires verification in person rather than renewal following initial registration; requires DPS to send out verification forms prior to the date a verification is due; gives credit for registration in other jurisdictions or while on probation or parole; provides for reduction of registration period for tier I SOs under certain

circumstances; changes local registries to a central registry; requires, in differing degrees, different information on the DPS website; restricts political subdivisions of the state and law enforcement agencies from imposing any other restrictions on SOs; and amends the crimes of child solicitation by electronic communication device and criminal sexual communication with a child to remove the notice requirements present in existing law.

TECHNICAL ISSUES

1. Page 7, line 14 refers to paragraphs (1) through (4) of the subsection when there are only three preceding paragraphs in that subsection.
2. Page 9, lines 1-2 and 4-5 refers to paragraphs (1) through (10), although there are eleven preceding paragraphs in that subsection.

OTHER SUBSTANTIVE ISSUES

The AOC reports that federally recognized tribes must comply with the federal requirements of the Adam Walsh Act. In some instances, if a tribe is unable to comply then the authority for sex offender registration may be delegated to a state.

The PB notes that under HB 179, a SO convicted twice of the misdemeanor of attempted voyeurism would be required to register every ninety days for life.

WHAT ARE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The PB and the NMCD contend that the status quo will at some point result in the loss of federal funding.

OTHER COMMENTS

RSOL New Mexico, a citizen group comprised of sex offenders, family members, and other citizens concerned about SORNA, comments in its analysis of the bill that listing a registrant on the DPS website and requiring registration of addresses at which a registrant habitually lives, among other changes to SORNA in HB 179, is detrimental to the registrant's ability to find employment and housing, undermines a registrant's support system, and destabilizes the registrant, all of which increases the risk of recidivism.

MD/amm:svb