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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13

SPONSOR Taylor LAST UPDATED \_\_\_\_\_ HB 270

SHORT TITLE Sex Offender Parole Risk and Needs Assessment SB \_\_\_\_\_

ANALYST Chenier

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$33.0	\$55.5	\$88.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorney (AODA)  
 Attorney General’s Office (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 270 amends, Section 31-21-10.1 NMSA 1978, the statute governing parole for sex offenders. The bill also adds “child solicitation by electronic communication device” to the list of offenses in Section 31-21-10.1(A)(1) that require an indeterminate period of supervised parole for a period of not less than five years and not in excess of twenty years.

The bill adds a new Subsection C to Section 31-21-10.1 describing the risk and needs assessment the parole board may consider in determining the terms and conditions of supervised parole for the sex offender. Subsection C specifies that the assessment shall be performed by a licensed psychologist under contract with the human services department, who is certified to administer a dynamic evaluation instrument that has specific relevance to evaluating sex offenders and that has been validated. The sex offender must pay for the assessment, unless the offender is indigent, as determined by the public defender department.

HB 270 amends Subsection G (now, Subsection H) to provide that when a sex offender's parole is revoked and the offender is readmitted to prison, the sex offender may request a parole hearing one year after the date of revocation, and subsequent parole hearings may be held at one-year intervals.

## **FISCAL IMPLICATIONS**

It is not clear which agency would be responsible for paying for sex-offender risk-needs assessments for indigent inmates. The Adult Parole Board is expecting that under Section 31-21-10.1 NMSA 1978 it will conduct 22 sex-offender hearings in FY14 and 37 hearings in FY15. If all or most inmates are determined to be indigent by the PDD the cost to perform the assessments in FY14 will be \$33 thousand and in FY15 \$55.5 thousand.

## **SIGNIFICANT ISSUES**

The NMCD provided the following:

It may be difficult for sex-offenders to pay for the assessments, which are likely to cost somewhere around \$1,500. Even non-indigent sex offenders may not be able to afford this all in one payment, and it is unknown if those providing the assessments will allow payment over several months. Care will have to be made to ensure that only qualified individuals perform the assessments, which in some cases may necessarily result in the assessor labeling an offender as a pedophile or an otherwise predatory offender.

The PDD provided the following:

Due to the way sex-offender parole hearings will come due, there will be a snowballing increase in caseload. The former Chief Public Defender determined that 2 new PDD FTEs would be required to address the mandates of the law: a senior PD4 attorney and a paralegal. The cost for a PD4 start-up is \$82k, with \$77k recurring; a paralegal start-up is \$46k with recurring \$41.5k.

Adding one offense to the list of enumerated offenses, requiring sex offender parole, and requiring sex offender parole hearings, annually for sex offender parolees incarcerated for violation of sex offender parole, would result in a fiscal impact on all agencies involved in sex offender parole supervision and sex offender parole hearings including the AGO, the PDD, and Adult Parole Board.

It should be noted that sex-offender assessment methods may not be uniformly available throughout the state of New Mexico. Also, resources must be identified and dedicated to pay for the cost of administering the assessments to probationers and parolees.

The NMSC provided the following:

A Risk and Needs Assessment Sub-committee met several times to work on the development of an assessment for sex offenders. During the meetings, sub-committee members and staff discussed static and dynamic risk and needs assessments used in other jurisdictions. It quickly became apparent that other jurisdictions use multiple instruments, and collateral information, to provide for a comprehensive evaluation of sex

offenders. The sub-committee also learned that assessments are currently being performed for some sex offenders serving terms of probation and parole in Bernalillo County. The Sex Offender Management Board recommends to the Adult Parole Board and district courts that assessments be performed by collecting information gathered from various sources.

## **TECHNICAL ISSUES**

The AODA provided the following:

The new paragraph C in Section 1 of HB 270 provides that a risk and needs assessment shall be performed “by a licensed psychologist who has a contract with the human services department and who is certified to administer a dynamic evaluation instrument that has specific relevance to evaluating sex offenders and that has been validated.” Note that as written, this sentence describes the required qualification for the psychologist. He or she has to be certified to administer a specific type of test. But this provision does not set out any requirements for the test itself. It does not require that the test itself be a “dynamic evaluation instrument that has specific relevance to evaluating sex offenders and that has been validated.” It just requires the psychologist to be certified to administer such a test. The only requirement for the assessment set out in the statute is that it be approved by the sex offender management board of the New Mexico sentencing commission or another appropriate entity. See Section 31-21-10.1(B)(5). If it is the intent of HB 270 to set out requirements for the test itself, as well as for the person administering it, it should do so explicitly.

EC/blm