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FISCAL IMPACT REPORT

ORIGINAL DATE 02/26/13
 SPONSOR HJC LAST UPDATED 03/13/13 HB 570/HJCS
 SHORT TITLE Sex Offender Tiers, Registration & Information SB _____
 ANALYST Daly

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	Indeterminate*	Indeterminate*	Recurring	Federal Funds

(Parenthesis () Indicate Revenue Decreases)

*The DPS advises that each year the State is not compliant with the Adam Walsh Act, the State loses approximately \$100.0 thousand in federal funding.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Minimal*	Minimal*	Minimal*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications

Conflicts with HB 48, HB 437, HB 451, HB 452, and HB 446

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

The House Judiciary Committee substitute for House Bill 570 (HB 570) amends and enacts multiple statutory sections within the Sex Offender Registration and Notification Act, Section

29-11A-1 through 10, NMSA 1978 (SORNA) as follows:

- adds a new definition of “out-of-state registrant”, Section 29-11A-3, to mean any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory (Section 1(F));
- limits the definition of two crimes classified as sex offenses in Section 29-11A-3 to provide that to qualify as a sex offense, the offenses of kidnapping and false imprisonment must be committed “with the intent to inflict a sexual offense”, but also expands those definitions to apply regardless of the age of the victim and when the victim is the child of the offender (Section 1(I)(6) and (7));
- restricts the circumstances under which child solicitation by electronic communication device is a sex offense to those convictions occurring on or after July 1, 2013 (Section 2(I)(11));
- amends Section 29-11A-4 to require a sex offender register with the local county sheriff within five business days (rather than the current 10 days) of release, and requiring the offender provide not only a current address but the physical and mailing address and the address of every place where the sex offender habitually lives; the names, email addresses, monikers or other self-identifiers used on social networking sites (defined within the Act) to be used only for law enforcement purposes; telephone numbers; professional licenses; license plates or other identifiers and descriptions of any vehicle owned or primarily operated by the offender, including aircraft and watercraft; name and address of any school or institution of higher education that the offender is attending; and copies of the offender’s passport and immigration documents. It also requires any changes in information to be reported within five business days (Section 2(B) and (F));
- requires a sex offender who is a resident of another state but who is employed in New Mexico or attending school or a higher education institution within the state to register with the county sheriff within five business days after beginning work or school and also requires the offender to provide current physical and mailing address and the address of every place where the offender habitually resides (Section 2(C) and (D));
- requires the county sheriff with whom a sex offender registers obtain a palm print (as well as a complete set of the sex offender’s fingerprints) and a physical description (Section 2(E));
- retains the requirement that a sex offender required to register under Subsection D of Section 29-11A-5, NMSA 1978 verify registration information not less than once in each 90-day period following the date of initial registration for the remainder of the offender’s life (Section 2(L)(1));
- requires a sex offender required to register under Subsection E of Section 29-11A-5, NMSA 1978, verify registration information once every 6 months for a period of 10 years (Section 2(L)(2));
- requires an out-of-state registrant verify registration information for whichever is the longer of: a) the duration of time remaining in the registrant’s convicting jurisdiction and at the same frequency as required there but no less than once every six months; or b) the duration of time remaining that would be required for the equivalent offense in New Mexico (Section 2(L)(3));
- requires the Department of Public Safety (DPS) to send a verification form to a sex offender at least 15 days prior to the date the offender is required to verify registration information, which form shall contain current registration information and notice of the date verification is due. Whether or not the verification form is received, the offender must appear in person to verify on the date required (Section 2(N));

- applies penalties to knowing and willful failures to comply with verification requirements (Section 2(P) and (Q));
- requires the DPS to establish a secure system that permits sex offenders to notify the Department of changes in registration information electronically (Section 2(O));
- requires the DPS website to include this registration information of a sex offender: legal name and any other names or aliases used; current address and address of every place the offender habitually lives (defined as “any place where the sex offender lives for at least 30 days in any 365-day period”); place of employment, if employment requires direct contact with children; sex offenses for which convicted; photograph; date of birth; physical description; and a link pinpointing location of sex offender’s employment if offender has direct contact with children (Section 3(E)); and
- amends Section 29-11A-9 governing state preemption to prohibit local government bodies from imposing any other restrictions on sex offenders that are not included in the SORNA and prohibits them from requiring an offender to report or to register more frequently or to provide information not required by the SORNA (Section 4).

The bill also contains in Section 5 an applicability clause limiting the applicability of its amendments to SORNA to those persons found guilty of committing a sex offense on or after July 1, 2013.

The effective date of HB 570 is July 1, 2013.

FISCAL IMPLICATIONS

It is unclear whether HB 570 brings the State into compliance with the Adam Walsh Act amendments regarding sex offender registration and notification. See Significant Issues. The DPS advises that noncompliance results in an annual ten percent reduction in the federal Justice Assistance Grants awarded to the State, which amounts to more than \$100 thousand per year. That is the figure reflected in the Revenue Table above.

The DPS reported in its earlier analysis that it will face a fiscal impact in implementing the amendment in Section 2(N) that requires DPS to mail notifications to the sex offender 15 days prior to a sex offender’s date to verify registration information. In the past DPS has proactively mailed out reminders to sex offenders of their duty to renew. The DPS estimates this cost as approximately \$10-12 thousand. Further, the AODA anticipates that, to the extent this substitute bill imposes additional requirements under the SORNA and applies penalties to violations of verification requirements, cases charging violations may increase. Those additional cases would cause corresponding increased costs for district attorneys, the courts, and the public defender. All told, all of these costs are estimated to have minimal fiscal impact on the State.

SIGNIFICANT ISSUES

A significant issue may be whether HB 570 brings the New Mexico SORNA into compliance with federal law. See Sex Offender Registration and Notification Act, Pub. L 104-248, Tit. 1, 120 Stat. 590 (2006). Based on the earlier analysis of the DPS, it appears that HB 570 may not bring the State into compliance with the federal Adam Walsh Act requirements for at least these reasons:

- the listing of sex offenses does not include voyeurism or conspiracy crimes;

- the existing ten day requirement for registration is changed to five days, when the federal law requires registration within three days; and
- the failure to include all crimes committed against children in the highest tier.

Further, in a related analysis (HB 48), the AODA stated that including certain foreign convictions in the definition of sex offender (as added by the House Floor Amendment #1 to that bill) brings that definition generally in line with the Adam Walsh requirements. The definition of that term in HB 570 does not include those types of convictions.

The AODA notes that HB 570 changes the offenses for which registration is required under the SORNA. It narrows the kidnapping and false imprisonment offenses to offenses committed with the intent to inflict a sexual offense, while at the same time it removes language that excludes cases involving an adult victim, or involving a child victim if the offender is a parent.

It also reports that the additional information regarding the offender required by HB 570 should allow for easier identification by law enforcement and by the public, as most of this information will also be posted on the SORNA website.

In addition, the AODA questions the language limiting the crime of child solicitation by electronic communication as provided in Section 30-37-3.2, NMSA 1978 as qualifying as a sex offense only for convictions occurring on or after July 1, 2013. It points out that the current definition contains no time provision regarding this offense, that no other offenses listed have a time provision, and the reason for this time limitation is not clear. It advises that previous versions of Section 30-37-3.2 had constitutional challenges, but those challenges related to dissemination of material harmful to a minor by computer—which is not the same crime as child solicitation by electronic communication device.

The AGO also advised in its earlier analysis as to the legality of the provision in Section 2(B)(8) requiring a sex offender to provide email addresses and monikers:

There is an argument that the giving of email addresses and monikers used for the internet is a violation of the First Amendment. However, Wisconsin has a very similar law that was found to be constitutional because the passwords were not being asked of sex offenders nor was their access restricted. *See John Doe of Connecticut and John Doe of Florida v Rick Raemisch*, 2012 U.S. Dist. LEXIS 121794. Case law seems to suggest that as long as there is no restriction on internet access there is no First Amendment violation.

Further, the AGO commented on legal challenges to these types of registration requirements more generally:

The other argument that is commonly made is that all registration requirements violate due process. However, many courts have found that the registration requirements are a civil regulatory system rather than an additional punishment for the crime. This includes ex post facto claims when new crimes that were not originally listed as offenses requiring registration become subject to registration. *State of New Mexico v Druktenis*, 2004 NMCA 32. Registration has been recognized as a civil regulatory system designed to assist law enforcement and keep children safe. The court in *Raemisch* stated that the fact that the restrictions are difficult and cumbersome is not enough to make them unconstitutional.

The AGO also notes that New Mexico, like Wisconsin, is required by federal law to disclose information about the registered sex offender. The Wisconsin court found no violation in publishing the information on a website.

CONFLICT

HB 446 amends the SORNA to create a three-tier classification system, shorten some time periods for registration, and add offenses subject to registration requirements. HB 451 and HB 452 appear to address some of the same issues as HB 570 and HB 446, but break them down into two separate bills. HB 437 adds human trafficking to the list of offenses requiring registration under the SORNA. HB 48 expands definitions in the SORNA, including sex offender, and imposes penalties for sex offender use of social networking websites and other internet interfaces.

OTHER SUBSTANTIVE ISSUES

Additionally, the DPS advised in its earlier analysis that it recently implemented the Offender Watch program, which enables all Sheriff Offices to gather sex offender registration information at the local level and enter and provide this information electronically to the DPS for statewide consolidation of this information for the benefit of the public. HB 570 now allows this collaborative effort to continue.

The New Mexico Sentencing Commission (NMSC) reports that 57 jurisdictions (including 16 states, three territories and 38 tribes) have substantially implemented the federal sexual offender registration and notification requirements contained in the Adam Walsh Act.

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