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FISCAL IMPACT REPORT

SPONSOR Maiez **ORIGINAL DATE** 2/22/15
LAST UPDATED 3/16/15 **HB** 508/aHSCAC

SHORT TITLE Increase Commercial Sex Crime Penalties **SB** _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with HB101 and SB424
 Relates to HB587

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of HSCAC Amendment

The House Safety and Civil Affairs Committee amendment to House Bill 508 strikes the phrase “over the age of thirteen and” making the hiring or offering to hire a child under the age of sixteen to engage in any prohibited sex act a first degree felony.

Synopsis of Original Bill

House Bill 508 proposes to amend the Sexual Exploitation of Children by Prostitution Act (Section 30-6A-4 NMSA 1978) making

- engaging in a prohibited sexual act with a child under sixteen a first degree felony,
- hiring or offering to hire a child over 13 and under 16 to engage in any prohibited sexual act a first degree felony,
- patronizing prostitutes a misdemeanor unless it is a second or subsequent conviction then it is a fourth degree felony,

- promoting prostitution a third degree felony,
- accepting the earnings of a prostitute a third degree felony,
- human trafficking a second degree felony unless the victim is under 16 then it is a first degree felony.

FISCAL IMPLICATIONS

The AOC states that as penalties become more severe, defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, and courtroom availability and jury fees. These additional costs are not capable of quantification.

SIGNIFICANT ISSUES

According to PDD, current law provides adequate punishment and also has a rational scheme for incremental increase in punishment based on the age of the victim.

AODA offers the following:

HB 508 raises the penalties for certain sex crimes. For two of those crimes, profiting from child prostitution and human trafficking in children, HB 508 does away with the distinction between crimes committed against a child under thirteen and crimes committed against a child between thirteen and sixteen.

HB 508 leaves in place the age distinction in Section 30-6A-4(B). The bill however does not address hiring or offering to hire a child under the age of thirteen, so that is not a crime under the statute.

Note that other statutes not amended by HB 508 also employ age distinctions in sex crimes against children. See, for example, Section 30-9-13 NMSA 1978, Criminal Sexual Contact of a Minor, and Section 30-9-11 NMSA 1978, Criminal Sexual Penetration.

This bill affects the sentencing for the crimes. For example, under HB 508 it is a first degree felony to offer a child for prostitution. But the act of criminal sexual penetration committed on a child age thirteen to eighteen is a second degree felony. See Section 30-9-13.

According to the AGO, the bill may conflict with other statutory penalties regarding sexual offenses against minors such as Criminal Sexual Penetration of a minor and Criminal Sexual Contact of a minor where first degree penalties are mandated when victims are children under 13 years old.

The AGO adds that it has prosecuted 19 cases related to human trafficking that include the charges of promoting prostitution and accepting the earnings of a prostitute. Three of those cases have involved minor victims.

PERFORMANCE IMPLICATIONS

The courts are participating in performance based budgeting. This bill may impact the courts' performance based budgeting measures, which may result in a need for additional resources. For

example, the district court's performance measure clearance rates may be impacted if increased penalties lead to an increased demand for jury trials and fewer plea bargains, thereby increasing the amount of judge and clerk time needed to dispose of cases.

ADMINISTRATIVE IMPLICATIONS

PDD opines that an increase in penalties may make it more likely for cases to go to trial, rather than be resolved through plea bargain, particularly in cases where the proposed increase is from a misdemeanor to a felony. Therefore, enactment of this legislation is likely to result in more trials and appeals overall.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 508 leaves in place the age distinction in Section 30-6A-4(B): “Any person hiring or offering to hire a child over the age of thirteen and under the age of sixteen to engage in any prohibited sexual act is guilty of a [~~second~~] first degree felony.” The statute does not address hiring or offering to hire a child under the age of thirteen, so that is not a crime under the statute.

Note that other statutes not amended by HB 508 also employ age distinctions in sex crimes against children. See, for example, Section 30-9-13 NMSA 1978, Criminal Sexual Contact of a Minor, and Section 30-9-11 NMSA 1978, Criminal Sexual Penetration.

This affects the sentencing for the crimes. For example, under HB508 it is a first degree felony to offer a child for prostitution. But the act of criminal sexual penetration committed on a child age thirteen to eighteen is a second degree felony. See Section 30-9-13.

Conflicts with HB 101 (also amending Section 30-6A-4 NMSA 1978) and HB 424 (also amending Section 30-9-4 NMSA 1978).

OTHER SUBSTANTIVE ISSUES

AODA points out that HB 508 raises the penalties for certain sex crimes, profiting from child prostitution and human trafficking in children. It also does away with the distinction between crimes committed against a child under thirteen and crimes committed against a child between thirteen and sixteen.

ABS/aml/je