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FISCAL IMPACT REPORT

SPONSOR	Maestas		ORIGINAL DATE LAST UPDATED	2/11/16	HB	236
SHORT TITLE P		Penalty for Sexual	Exploitation of Children	1	SB	

ANALYST Downs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See fiscal implications	See fiscal implications	See fiscal implications	See fiscal implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to House Bill 65

SOURCES OF INFORMATION

LFC Files

<u>Responses Received From</u> Bernalillo County Metropolitan County (BCMC) Administrative Office of the District Attorneys (AODA) Attorney General's Office (AGO) Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

House Bill 236 does not appropriate any funds. The bill amends Section 30-6A-3 NMSA 1978, Sexual Exploitation of Children, to increase the penalty for possession of images depicting any prohibited sexual acts involving a child under the age of 18 from a fourth degree felony to a second degree felony.

It is likely that if PDD could require additional attorneys, both the district attorneys' and the attorney general's office could as well.

FISCAL IMPLICATIONS

The Public Defender Department (PDD) stated that cases involving higher penalties are more likely to go to trial which could result in the need to hire senior-level attorneys to handle the cases. The mid-point salary for a trial attorney, according to PDD, is \$103.2 thousand including benefits.

SIGNIFICANT ISSUES

The Administrative Office of the District Attorneys reported that the amendment would make possession of prohibited images as serious as causation or manufacturing of prohibited images, and more serious than distribution. According to AODA, the basic sentence on a fourth degree felony is 18 months; the basic sentence on a second degree felony is 9 years. AODA stated the bill would allow the punishment to better fit the crime, which is currently considered one count of possession no matter how many images.

PDD stated that the proposed change to statute would "simplify matters and make for less arbitrary sentencing with regard to possession, while leaving in place the language that allows for only one count to be charged." The department also expressed concern that the change does not allow for a gradation of offenses, meaning that if a defendant possessed only one picture, he or she would be incarcerated for nine years.

The bill does nothing to address the findings in *State v Olsson*, 2014-NMSC-012, which found that the legislature should more clearly define the how many images qualify for what sentences.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 236 relates to House Bill 65, which amends the same section to allow each possession of an image depicting a prohibited sexual act to be charged individually.

JD/al