

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 270 provides some limits to the new sex offenses under SORNA so that they include: patronizing prostitutes only when the person believed to be a prostitute is less than sixteen and voyeurism only when the victim is less than sixteen. Those same changes are repeated in the section governing DPS' retention of registration information for the entirety of the sex offender's life, and again in the section concerning forwarding registration information to law enforcement, providing certain registration information upon request, notification to schools within a one-mile radius of the sex offender's residence, and including certain registration information on DPS' website.

PDD points out the bill, as originally introduced and as amended, contains no effective date, which has been specified in previous amendments to SORNA. AODA notes that while most of the existing criminal statutes do not make distinctions based on the age of the victim, when they do there is no consistency, either generally or in SORNA in particular: here, the age limit is less than sixteen to the crimes being added, but criminal sexual contact of a minor and incest are sex offenses under SORNA when the minor is less than eighteen. However, AGO points out the changes contained in the amendment are consistent with certain other sexual offenses against minors consent may be an issue, citing fourth degree criminal sexual penetration of a minor as an example. See Section 30-9-11(G)(1), NMSA 1978.

Synopsis of Original Bill

House Bill 270 expands the Sex Offender Registration and Notification Act (SORNA) to include these sex offenses:

- patronizing prostitutes when the person believed to be a prostitute is less than eighteen years of age;
- promoting prostitution when the victim is less than eighteen years of age;
- accepting earnings of a prostitute from a person engaged in prostitution who is less than eighteen years of age;
- voyeurism;
- human trafficking for a sexual purpose when the victim is under sixteen years of age; and
- conspiracy to commit any of the sex offenses, both as defined in existing law and those being added here (Section 1).

The bill also:

- requires DPS to retain the registration information for the entirety of the sex offender's natural life if convicted of any of these sex offenses (Section 2(D)(6) through (10) and (12));
- removes the exceptions for a parent as to kidnapping and false imprisonment of a child and adds the requirement, consistent with existing provisions in SORNA, that that these crimes be committed with the intent to commit a sex offense (Section 2(D)(4) and (E)(3)); and
- requires a county sheriff to forward registration information to the District Attorney or the chief law enforcement officer for a municipality and provide notice to schools within a one-mile radius of the offender's residence, and requires DPS to include certain of the

registration information on its website when a sex offender is convicted of any of these additional sex offenses except voyeurism (Section 3(A)(5)-(8) and (10)).

FISCAL IMPLICATIONS

PDD comments that HB 270 will likely result in a higher percentage of prosecutions for failure to register as a sex offender, especially in the transitional period in which persons convicted of the newly added crimes must comply, and where notification may present difficulties. Although PDD believes it will be able to absorb some additional cases, any increase in the number of prosecutions brought about by the cumulative effect of this along with other proposed criminal legislation will create a need for increases in indigent defense funding to maintain compliance with constitutional mandates. Increased costs to the district attorneys, the courts and NMCD (as to probation and parole officers) also may be anticipated, although no agency provided estimates as to those costs.

In addition, AGO notes that the expanded list of sex offenses added to SORNA by HB 270 will bring the State into compliance, or substantial compliance, with the federal Adam Walsh Act Amendments/SORNA, which would help ensure state receipt of federal grant funding explicitly tied to such compliance. As DPS explains, HB 270 has a positive fiscal impact to the Department as a result of increased funds from the Justice Assistance Grants. Currently, the state of New Mexico is not in compliance with that federal law. DPS, as the state administering agency for New Mexico, currently loses ten percent (10%) of the Justice Assistance Grant funding for the state. The penalty is applied to the DPS's allocation, a portion of which is sub-granted to law enforcement task forces around the State and the remainder to DPS Investigations Bureau drug enforcement activities and officer advanced training. (The allocation between DPS and local task forces is determined by the Drug Enforcement Advisory Board.)

The penalty for the 2014 grant was \$107,000. That number is shown in the Revenue table above, reflecting the funding the State lost last year that would not be lost in the future if HB 270 is enacted. This loss of funding negatively impacts DPS and law enforcement around the state of New Mexico.

SIGNIFICANT ISSUES

NMSC advises that an October 2013 report from the U.S. Department of Justice addressing New Mexico's compliance with the federal Adam Walsh Act (SORNA) concludes that, other than conspiracy, all of the crimes being added to the state's SORNA law in Section 1 are required by that federal act. In addition, DOJ states that the misdemeanor criminal sexual contact involving a child must be included for the state to comply with federal law.

AODA notes that the use of consistent definitions of kidnapping and false imprisonment throughout SORNA clarifies application of the act and removes a potential litigation issue. Currently, kidnapping and false imprisonment are defined in the definition section of SORNA to include the offense only when it is committed with the intent to commit a sex offense. But the two offenses are defined in Section 29-11A-5 in existing law in terms of the age of the victim, with no reference to the requirement that the offense be committed with the intent to commit a sex offense.

As to other sex offenses being added to SORNA by HB 270 AODA points out that defining

certain offenses in terms of the age of the victim the bill excludes from its registration requirements persons convicted of promoting prostitution or human trafficking if the victim is an adult.

AOC also calls attention to the addition of the crime of “conspiracy to commit any of the sex offenses” as a sex offense that requires registry as a sex offender. This addition is significant as it relates to sex offenses and prostitution since it is not uncommon to have more than one individual involved in these types of activities, particularly prostitution.

RELATIONSHIP

This bill relates to SB 380, which requires all offenders who must register under SORNA pay a \$140 fee that will go to the Internet Crimes Against Children Fund.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

NMCD notes that enactment of this legislation is necessary for the State to comply with the Adam Walsh amendments.

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