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FISCAL IMPACT REPORT

SPONSOR: Sanchez DATE TYPED: 01/22/01 HB 40/aHJC
 SHORT TITLE: Amend Sexual Exploitation of Children SB _____
 ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	FY02	FY01	FY02		
		Minimal			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 17

SOURCES OF INFORMATION

Administrative Office of the Courts, Administrative Office of the District Attorneys and the Public Defender Department

SUMMARY

Synopsis of HJC Amendment

The HJC amendment makes technical changes. It also adds a section of the existing law to HB 40 with the small technical change of deleting the word “or.” The only substantive change is the addition of a section stating that the provision of HB 40 shall not apply to the possession of child pornography when it is “possessed for a bona fide medical or psychological treatment, social work, law enforcement, legal representation, judicial or legislative purpose.”

Synopsis of Original Bill

This bill enhances Section 30-6A-3 NMSA 1978, sexual exploitation of children by adding simple possession of child pornography to the list of criminal infringements under this section. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

Significant Issues

Current law only prohibits distributing and manufacturing of child pornography.

FISCAL IMPLICATIONS

It will cost the judicial system \$400 for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact to the Judiciary and the Public Defender would be proportional to the enforcement of this law. This amendment could also increase the caseloads of the district attorneys, the public defenders and the Judiciary.

CONFLICT/DUPLICATION/COMPANIONSHIP/RELATIONSHIP

This bill is identical to HB 17.

SUBSTANTIVE ISSUES

The Public Defender Department believes the language of the proposed amendment may violate due process as it contemplates broad prosecutorial discretion in defining child pornography. Presently written current law, Section 30-6A-1 helps define both the exploitive nature of the crime and the crime itself, by requiring some manner of affirmative act ('distribution', 'intent to distribute', 'cause or permit', 'manufacture') to trigger a violation. Distribution, intent to distribute, causing or permitting and manufacturing child pornography not only demonstrates an exploitive intent upon the protected class, but indicates that the perpetrator intends the items for either personal gratification, or "for the purpose of sexual stimulation." (30-6A-2 paragraph 5 "*Definitions*") The new language broadly expands the reach of the statute by making mere possession of material, that may or may not be fit the present strictures of the statute, a crime. By disposing of the defining nature of sexual exploitation illustrated by the affirmative acts, this amendment allows a governmental authority to not only determine that a citizen knew or should have known that the material was 'sexually exploitive' of children, but that the material itself violates the statute.

The mere act of downloading material, the nature of which is unknown to the recipient, would trigger a violation of the proposed amendment. Finally, the language "any visual or print medium depicting any sexual act" could conceivably make criminal the possession of any illustrated or electronically enhanced renditions (Barnes and Noble now offers books on line) of not only questionable material, but literary, religious and artistic masterpieces from Ruebens to Rousseau to The Bible to Shakespeare (Romeo and Juliet were fourteen and thirteen respectively).

DW/ar/njw