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FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 03/04/01 HB 17/aSFL#1
 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		
		See Narrative			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to Duplicates HB 40

SOURCES OF INFORMATION

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

BILL SUMMARY

Synopsis of SFL#1 Amendment

HB 17/aSFL #1 adds the word “obscene” in front of the phrase “visual or print medium” and adds the definition of “obscene.” The remainder of the changes are technical.

Synopsis of Original Bill

This bill enhances current law related to sexual exploitation of children by adding simple possession of child pornography to the list of criminal infringements under the statute. A person who violates the provisions of the new law would be 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.

DUPLICATION

This bill is identical to HB 40 sponsored by Representative Sanchez.

SUBSTANTIVE ISSUES

The Public Defender Department reports the language of the proposed amendment may violate due process because it contemplates broad prosecutorial discretion in defining child pornography. As presently written, the 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/njw:ar