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FISCAL IMPACT REPORT

SPONSOR Powdrell-Culbert DATE TYPED 2/3/05 HB 241

SHORT TITLE Involuntary Servitude & Trafficking of People SB _____

ANALYST Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Public Defender Department (PDD)
Corrections Department (CD)

SUMMARY

Synopsis of Bill

House Bill 241 This bill creates a new crime under the Criminal Law Code for involuntary servitude, sexual servitude of children and trafficking in persons for forced labor or servitude.

- Section 2 of the bill defines "involuntary servitude" and lays out different degrees of penalties from a third degree felony to a first degree felony depending on the extent of injury to the victim.
- Section 3 of the bill defines "sexual servitude of a child" and lays out different degrees of penalties from a third degree felony to a first degree felony depending on the extent of injury to the victim. This section also contains a definition for "commercial sexual activity" and "prohibited sexual act."
- The last section of the bill makes it a crime to traffic in persons for forced labor or servitude, and again, lays out different degrees of penalties depending on the extent of injury to the victim.

Significant Issues

The AGO provided the following:

- The language in Section 2(A) may open the legislation up for challenges for vagueness, in that it is unclear what either “forced labor” or “services” means, nor are there any definitions in the bill defining these terms. Also unclear in that section is what “government document” would encompass. It appears that the intent behind “government document” would include passports, immigration documents or other government identification documents, if so; this should be defined as such.
- Section 3 referring to sexual servitude of a child of the bill may raise some double jeopardy challenges under State v. Swafford, 112 N.M. 3, (Sup Ct. 1991) if the defendant is convicted and punished under multiple statutes for the same offense.
- Section 3 may conflict with existing statutes specifically Sexual Exploitation of Children §30-6A-1. Section 2 and Section 4 dealing with involuntary servitude and trafficking in persons may also raise double jeopardy problems with the existing statutes on kidnapping, false imprisonment, etc.
- It is unclear whether or not it is the intent of the legislation, however, from the language used in Section 3A(1) and in Section 4, it would appear that an affirmative defense of consent of the victim may be viable.

The PDD believes federal prosecution may, in certain cases, preempt state prosecution of conduct that would otherwise fall under this proposed legislation.

FISCAL IMPLICATIONS

The Bill creates several new felony crimes without appropriating any funds to cover the potential increased costs to the CD. This Bill could increase the CD’s prison population and the number of offenders under the supervision of the Probation and Parole Division, consequently resulting in at least a minimal increase to the CD’s overall costs.

ADMINISTRATIVE IMPLICATIONS

The CD can absorb the administrative burden and costs associated with housing and supervising additional offenders.

ALTERNATIVES

The AGO suggests the following:

- Concepts of involuntary servitude and trafficking in persons could be incorporated or combined with the other already existing relevant criminal sections, e.g. kidnapping and false imprisonment;
- Incorporate or combine the sexual servitude of a child with the already existing statute on Sexual Exploitation of a Child; and

- Add sections that include definitions for many of the terms used.

The AGO states the federal law may provide examples of definitions and provide some uniformity in defining these new terms and concepts. See Trafficking Victims Protection Act of 2000, Pub. L. 106-386 (“TVPA”). The Model Penal Code has recommended that creation of an involuntary servitude crime be included in the criminal code section or chapter on kidnapping

Other States with trafficking in persons and servitude statutes that may also provide some guidance are Texas, Washington, Minnesota, Missouri and Florida.

DW/lg