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FISCAL IMPACT REPORT

ORIGINAL DATE 2/5/07

SPONSOR Kernan LAST UPDATED 3/12/07 HB _____

SHORT TITLE Sex Offenders Near School Boundaries SB 464/aSJC/aSFI

ANALYST Peery-Galon

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
 Public Education Department (PED)
 New Mexico Corrections Department (NMCD)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of SFI Amendment

The Senate Floor amendment to Senate Bill 464 changes the requirement from 300 feet to 1,000 feet in regards to sex offenders living or temporarily residing within an exterior boundary of a public school, parochial school, private school, charter school, licensed daycare center or preschool.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 464 removes from the definition of school "property that is used for school purpose." The amendment also removes the wording "or be temporarily located" in regards to the sex offender being within 300 feet of an exterior boundary of a school pursuant to the provisions of the Sex Offender Registration and Notification Act.

Synopsis of Original Bill

Senate Bill 464 amends the Sex Offender Registration and Notification Act to prohibits sex

offenders from living, temporarily residing, or being temporarily located within 300 feet of an exterior boundary of a public school, parochial school, private school, charter school, licensed daycare center or preschool or property that is used for school purposes. The definition of a school specifically excludes post-secondary schools, such as universities and colleges.

FISCAL IMPLICATIONS

AOC states there will be minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. AOC reports new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts requiring additional resources.

SIGNIFICANT ISSUES

PED notes “school” as currently defined in the proposed legislation could include home schools or unmarked battered spouse shelters. A sex offender could be in violation of the law without knowing it by reason of the location of the dwelling. PED notes a broad definition of “school” could preclude a sex offender from living almost anywhere, particularly in a more urban, densely populated city.

AGO states the proposed legislation assumes the new provision would be enforced and punished similar to a failure to register.

ADMINISTRATIVE IMPLICATIONS

NMCD states the proposed legislation will require the department to revise forms given to all sex offenders leaving prison or being placed on parole, so that offenders are aware of the new law. Probation and parole officers will have to ensure the supervised sex offenders do not live within 300 feet of a school boundary and file violation reports if any of the offenders violate this new provision of law.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The proposed legislation relates to Senate Bills 439, 450 and 476 which all address issues regarding sex offenders.

OTHER SUBSTANTIVE ISSUES

NMCD reports the department has had some success in using the standard conditions of probation, specifically the provision that requires the offender to obey the legitimate orders or instructions of the probation and parole officer requiring sex offenders not to reside within 1,000 feet of an elementary school. NMCD states at least one state district judge has upheld this condition as legitimate.

AGO reports other states have addressed related situations involving home-schooling, imposed greater physical space of usually 2,000 feet, included parks, and provided an exception or acknowledgement that a sex offender may need to enter school grounds for legitimate reasons, such as parent-teacher meetings.

ALTERNATIVES

PED suggests the definition of “school building” found in Section 22-1-2 of the Public School Code to mean a public school, an administration building and related school structures and facilities, including teacher housing, that is owned, acquired or constructed by the school district as necessary to carry out the functions of the school district.

AGO suggests including a definition of “temporarily located” because this phrase is ambiguous for purposes of interpreting what behavior is included, such as is it an offense to park a van in a school parking lot over a weekend.

AODA and NMCD suggest increasing the 300 feet to 1,000 feet or more.

RPG/nt