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FISCAL IMPACT REPORT

ORIGINAL DATE 03/11/07
 LAST UPDATED 03/12/07

SPONSOR SJC HB _____

SHORT TITLE Criminal Sexual Penetration of Children SB CS/528&439/aSfI

ANALYST Hanika Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$.1 see narrative			recurring	various

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (SC)

SUMMARY

Synopsis of SFI Amendment

The Senate Floor Amendment #1 requires that the first-degree felony crime of “aggravated CSP” on a child under nine years of age must be perpetrated with intent to kill or with a depraved mind regardless of human life. The amendment further includes all CSP perpetrated on a child under thirteen years of age to be guilty of CSP in the first degree.

Synopsis of Original Bill

The SJCS to SB 528 & SB 439 proposes to:

1. Amend Section 30-9-11: Creates a new first-degree felony crime of aggravated criminal sexual penetration (CSP), that includes all CSP perpetrated on a child under 9 years of age or b) perpetrated with intent to kill or with a depraved mind. c) Said crimes are punishable by life imprisonment. d) (31-18-15) Raises fine to \$17,500. e) (31-21-10.1) Requires indeterminate parole between 5 years to life; and, g) (29-11A-3, 29-11A-5) Provides for registration and notification.

2. Changes the definition of CSP 2nd by adding "by the use of force or coercion" on a child 13 to 18 years of age and deletes language regarding person in position of authority.

3. CSP of a child 13 to 18 with force or coercion is raised to a 2nd degree felony.

4. Changes to 31-21-10.1: a) Increases the parole term to not less than five years up to the natural life for aggravated CSP, CSP 1st or 2nd, CSCM 2nd or 3rd or sexual exploitation of children by prostitution in the first or second degree. b) Clarifies that the initial review the parole board conducts occurs after an offender has served the initial five years of parole, and thereafter at 2-1/2 year intervals. c) Changes the "state" to the "attorney general" as the entity which shall bear the burden of proving that the sex offender should remain on parole. d) Changes the burden of proof from "to a reasonable certainty" to "by clear and convincing evidence". e) Requires electronic real-time monitoring (with GPS technology) of every sex offender released on parole for the entirety of the parole period.

FISCAL IMPLICATIONS

The AODA reports more cases will most certainly go to trial if a defendant is facing a life sentence versus eighteen years. This will increase the budgetary needs, and the resource needs for those who prosecute these cases.

If a large number of offenders are convicted of this crime, the prison population and ultimately probation/parole caseloads will be increased. Persons convicted of these new crimes may be required to serve parole terms lasting the remainder of their natural lives, which could dramatically increase parole caseloads and parole supervision costs. In addition, any revenues created by this bill such as the increased parole supervision fees paid by those sex offenders on parole for extended periods will not be sufficient to offset the increased prison and parole supervision costs associated with this legislation.

The contract/private prison annual cost of incarcerating an inmate is \$23,867 per year for males. The cost per client to house a female inmate at a privately operated facility is \$21,651 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,467 per year. The cost per client in Intensive Supervision programs is \$3,383 per year. The cost per client in department-operated Community Corrections programs is \$3,503 per year. The cost per client in privately-operated Community Corrections programs is \$7,917 per year. The cost per client per year for male and female residential Community Corrections programs is \$39,401.

Real time global positioning technology is costly and the bill does not appropriate funding for this effort. The AGO is considering a pilot project for the Albuquerque area to provide this technology for approximately 250 sex offenders. The cost of the global positioning system (GPS) unit for 250 offenders for just one year is approximately \$766,500. The negative fiscal impact of requiring this technology is exacerbated by the fact that those convicted of sex offenses serve 5 to 20 years on parole. Further, the Department will probably have to hire additional FTEs to monitor the offenders, and to respond to offender violations. The cost of one probation and parole officer (salary, benefits and operating costs) is approximately \$53,000.

SIGNIFICANT ISSUES

The AODA reports the substitute bill does the following:

- increases the penalty for CSP of a child under 9 to life imprisonment and increases the fine and the parole requirement;
- creates a new crime of aggravated CSP with no specification as to age of the victim, however the CSP must be done "with an intent to kill or with a depraved mind regardless of human life."
- deletes the crime of CSP by a person in position of authority of a child 13-18 and does not redefine "force or coercion" as including that genre of crimes which do not necessarily include true "force or coercion" as an element, but include only coercion (see Criminal UJI 14-945 - defendant is a parent, relative, household member, teacher, employer or person who by reason of defendant's relationship was able to exercise undue influence over victim and used that authority to coerce victim to submit to the sexual contact.);
- increases the term of parole for aggravated CSP, CSP 1st or 2nd, CSCM 2nd or 3rd and sexual exploitation of children by prostitution in the 1st or 2nd degree to between 5 years and natural life of the sex offender;
- changes the burden of proof at the periodic parole hearing to "clear and convincing evidence".

PERFORMANCE IMPLICATIONS

There will be an administrative impact of the courts as the results of an increase in the amount of time necessary to dispose of cases.

ADMINISTRATIVE IMPLICATIONS

Due to the increased penalties brought by this bill for certain crimes, there will likely be an increase in trial and appeal workload for the PDD, the courts, the DAs and the Office of the Attorney General, since these offenders will be considerably less likely to take plea offers to life imprisonment.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflicts with SB 450, SB 452, and HB 578

TECHNICAL ISSUES

The phrase "with a depraved mind regardless of human life" may need further clarification. Adding CSP committed "with a depraved mind regardless of human life" to the crime of aggravated CSP will very likely result in substantial litigation determined to tie down both exactly what this term means in this instance and what mental state is required to be proven to secure the increased penalty. The last several decades have seen a great deal of this type of criminal litigation over the crime of "depraved mind murder," and such will almost certainly follow the passage of this bill.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The AODA believe the most serious sexual predators may get out of prison at an age at which they may re-offend.

AMENDMENTS

Add changes to Section 31-20-5.2 (the probation statute) which mirror the changes suggested to 31-21-10.1.

Allow crime of CSP 2nd by a person in position of authority to remain (30-9-11(D)), and add crime of CSP 2nd by the use of force or coercion to a child 13-18.

AHO/nt