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FISCAL IMPACT REPORT

ORIGINAL DATE 2/16/07

SPONSOR Garcia, MJ LAST UPDATED _____ HB _____

SHORT TITLE Create Offense of Human Trafficking SB 778/aSPAC

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	\$82.0	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SJM 24
Relates to HJM 22

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)
Correction Department (CD)
Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)
Public Defender Department (PDD)
Public Safety Department (PSD)

SUMMARY

Synopsis of SPAC

Senate Public Affairs Committee Amendment inserts the following: law enforcement is not allowed to arrest, nor is the attorney general or the district attorney allowed to prosecute a person for a suspected violation of the statutes unless an investigation of the suspected violation has been conducted by a specially trained investigator.

Synopsis of Original Bill

Senate Bill 778 creates a new criminal offense known as human trafficking and establishes a task force to combat human trafficking. The crime consists of a person knowingly recruiting,

soliciting, enticing, transporting or obtaining by any means another person with the intent or knowledge that force, fraud or coercion will be used to subject the person to labor, services or commercial sexual conduct; recruiting, soliciting, enticing, transporting or obtaining a person by any means under the age of eighteen years with the intent or knowledge that the person will be caused to engage in labor, services or commercial sexual activity; or benefiting financially by receiving anything of value from these acts with the knowledge that the act was committed. Penalties: Third degree felony that does not result in injury of victims sixteen and above, second degree felony for those under sixteen years old, and a first degree felony for those under 13. Where human trafficking results in injury to the victim sixteen and older, the penalty is a second degree felony, and where the victim is under sixteen, a first degree felony, and human trafficking that results in the death of a child, first degree felony resulting in death of a child. The bill also makes it a crime to knowingly profit from the crime of human trafficking.

Senate Bill 778 also creates a task force which duties include monitoring and evaluating the implementation of the law, develop and conduct training for law enforcement and victim service providers to identify victims of human trafficking, assist in the coordination among federal, state and local agencies in the implementation of the law, and implement a media awareness campaign in communities affected by human trafficking.

FISCAL IMPLICATIONS

The appropriation of \$82 thousand contained in this bill is a RECURRING expense to the GENERAL FUND. Any unexpended or unencumbered balance remaining at the end of FISCAL YEAR 2008 shall revert to the GENERAL FUND.

The legislation clearly contemplates that the Task Force will remain in operation through July 1, 2010 (beginning of FY 2011). So despite the fact that the appropriation language in the bill explicitly mentions funds reverting to the General Fund, the bill also sets up a situation where the Task Force is presently unfunded for its operation in FY 2009 and FY 2010, unless there are future expenditures included in those year's budgets. The likelihood is that an additional \$82K would be needed to fund the Task Force in FY 2009 and again in FY 2010.

While the bill does contain a revenue generating provision as well – since it provides for the forfeiture of motor vehicles or aircraft used for or intended for use in human trafficking, and for the forfeiture of monies and other negotiable that are the fruits or instrumentalities of the crime – the likelihood is that such seizures will not have any significant impact on the state's revenue. First, given the complexity of asset forfeiture in New Mexico, the reality is that few prosecutors statewide wish to pursue such forfeitures anymore lest they imperil a criminal prosecution and conviction by not pursuing the forfeiture exactly and precisely. If the purpose of the forfeiture provision presently included was to (1) generate revenue for the state and, more importantly, (2) provide a strong financial disincentive for those who traffic in human beings, it would be better to substitute a system of mandatory fines.

The Corrections Department adds that new felony convictions are likely to increase its costs by the minimal additions to the inmate population and probation/parole caseloads. The bill is unlikely to cause a moderate or substantial number of convictions, but it is always difficult to predict the effect of any new crime bill with any certainty.

SIGNIFICANT ISSUES

According to the AGO, SB 778 closely follows the federal Trafficking Victims Protection Act of 2000. Currently there are 24 states that criminalize human trafficking at the state level, including the border states of Arizona, California, and Texas.

According to the U.S. Health and Human Services, human trafficking is tied with the illegal arms industry as the second largest criminal industry in the world today and it is the fastest growing. U.S. citizens can also become trafficking victims. Child prostitution is a common form of domestic trafficking in which U.S. citizens are trafficked within the United States.

SB 778 makes it a crime to subject a person to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. This is distinguished from the crime of ‘smuggling’ where consent may exist. SB778 distinguishes those victims that may be seen as criminals and not seen as victims of human trafficking. Unlike smuggling, human trafficking as defined in SB778 does not require crossing of any border into other countries.

The task force proposed in SB 778 would provide a mechanism for law enforcement and victim services training, monitoring of the new law and developing protocols to investigate and provide victim assistance. Victims certified as human trafficking victims are eligible for federal ‘T’ visas and are entitled to remain in the country and assist with the prosecution of their case. They are also eligible to apply for residency.

PERFORMANCE IMPLICATIONS

AODA notes that until the Task Force begins submitting its reports on the extent and nature of the human trafficking problem in New Mexico, it is unclear what impact – if any – there will be on either law enforcement personnel or prosecutors. By virtue of the State’s contiguous border with Mexico, however, as well as the increasing numbers of immigrants from all over the world in the State’s metropolitan areas such as Albuquerque, Santa Fe, and Las Cruces – factors that in other states have been linked to an increased danger of vulnerable immigrants being criminally exploited – it is realistic to think that human trafficking will become a more frequent scourge in New Mexico in years to come. The legislation will put the State in the position of not having to rely upon the federal government for prosecution of human trafficking.

ADMINISTRATIVE IMPLICATIONS

The Chief Public Defender or his designee will be appointed to the task force.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

There is companion legislation in the form of SJM 24: Requesting the Establishment of a Task Force to Study the Extent of Human Trafficking in New Mexico and Make Recommendations; and HJM 22: Requesting the Establishment of a Task Force to Study the Extent of Human Trafficking in New Mexico and Make Recommendations.

OTHER SUBSTANTIVE ISSUES

According to the PDD, the punishment for this crime would range from third to first degree

felony depending on the age of the person trafficked and whether the person is injured or killed. Section F of the bill provides for enhancement of the sentence by two years if ten or more persons are trafficked. It is unclear from the language of Section F whether these ten individuals must have been victimized in a single or in multiple incidents. One convicted under this charge must also make restitution to the victim in the amount of the gross income or value of the victim's services.

ALTERNATIVES

One alternative, offers the AODA, would be to have the Task Force go forward *prior to* the enactment of a special statute criminalizing human trafficking, in order to assess the real extent and characteristics of the problem in New Mexico. The only potential advantage of such an approach would be the ability to better tailor the criminal statute to the specific problems New Mexico is encountering in this area. The risk is that in studying the problem first, then enacting a specific criminal statute, the state risks mounting an inadequate response to terrible crimes should they begin to become more prevalent in New Mexico.

POSSIBLE QUESTIONS

1. How pervasive is it?
2. What forms does it take; e.g., sweatshop-type labor conditions, sexual exploitation, etc.?

EO/mt