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FISCAL IMPACT REPORT

ORIGINAL DATE 2/17/07

SPONSOR Lopez LAST UPDATED _____ HB _____

SHORT TITLE Child Solicitation by Electronic Device SB 1108

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY07 | FY08 | FY09 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|---------|---------|----------------------|-------------------------|------------------|
| Total | NA | Unknown | Unknown | Unknown | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From

Public Defenders Department (PDD)
 Public Education Department (PED)
 Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Corrections Department (NMCD)
 Children, Youth and Families Department (CYFD)

No Response Received From

New Mexico Sentencing Commission

SUMMARY

Synopsis of Bill

Senate Bill 1108 amends Section 29-11A-3 to add child solicitation by electronic device to the list of offenses requiring a person to register as a sex offender upon conviction. Senate Bill 1108 amends Section 30-37-3.2 NMSA 1978 to make it illegal to use an electronic communication device for child solicitation. An “electronic communication device” is defined as a computer, video recorder, digital camera, fax machine, telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal. The proposed legislation increases the penalty from a fourth degree to a third degree felony, and makes it a second degree felony if the offender also attends or is present at a meeting that the offender arranged pursuant to the solicitation. Also, Senate Bill 1108 amends Section 31-21-10.1 to add child solicitation by electronic device to the list of sex offenses to which longer and more stringent parole terms apply.

FISCAL IMPLICATIONS

AOC states any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecution.

NMCD states that the enactment of the proposed legislation will result in a minimal increase to the department's prison population and probation/parole caseloads. The annual cost of incarcerating an inmate is \$23,867 per year for males and \$21,651 per year for females. The cost per client in probation and parole for a standard supervision program is \$1,467 per year, for an intensive supervision program is \$3,383 per year, for a NMCD community corrections program is \$3,503 per year, for a privately-owned community corrections program is \$7,917 per year, and for male and female residential community corrections program is \$39,401 per year.

The proposed legislation expands sex offenses, and a person placed on probation or parole after being convicted of a sex offense will be subject to five to 20 years of probation or parole. The convicted sex offender will be required to pay probation or parole supervision fees to the Corrections Department. NMCD states this increase in revenue may somewhat offset the costs associate with any increases in the prison population. Statute requires that supervision fees be placed into the Intensive Supervision Fund, and money in the fund can only be used for offenders placed in an intensive supervision program.

SIGNIFICANT ISSUES

Currently, statute states it is illegal to use a computer to solicit a child under sixteen to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in other sexual conduct when the perpetrator is at least three years older than the child.

CYFD states if the proposed legislation is enacted, it would expand the crime of child solicitation to include the use of various electronic devises in addition to computers. CYFD notes expansion of law appears reasonable in that it recognizes the proliferation of electronic devices that can be used to communicate and to solicit children.

ADMINISTRATIVE IMPLICATIONS

PDD states the proposed legislation may increase litigation and may create a need for additional staff.

AOC reports the proposed legislation could result in increased caseloads, requiring additional resources.

NMCD will need to revise the written notification regarding the sex offender's duty to register as a sex offender with the county sheriff in the county where the sex offender will reside. This written notification is given to sex offenders who are discharged from prison or placed on probation or parole.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

AODA notes that there may be a conflict due to the proposed legislation adding child solicitation by electronic device to the list of sex offenses which lead to longer parole terms, but not

amending Section 31-20-5.2 NMSA to require longer probation terms for those convicted of child solicitation by electronic device.

The proposed legislation has a relationship to House Bill 663 and Senate Bill 735, which deal with child solicitation by electronic device with a violent felony enhanced punishment provision.

The proposed legislation is a duplication of House Bill 918.

TECHNICAL ISSUES

Section 30-37-3.2 Subsection (B) of the proposed legislation makes it a second degree felony for a person to attend or to be present at a meeting with the child arranged through an electronic communication device. AOC states it is unclear if the person must be physically present or if being present through the means of an electronic communication device meets the criteria for this offense.

The list of items for the definition of “electronic communication device” does not include cell phones. PDD notes the technology use for cell phones and telephones is different.

AMENDMENTS

AODA states the proposed legislation in Section 30-37-3.2 has a problem in defining what the crime of child solicitation by electronic device is, in that it seems to require the person being solicited to be under the age of 16. However, subsection (C) states it is not a defense if the person solicited was a police officer. AODA recommends that subsection (A) be amended to read “Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, or someone the person believes is under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact, (or in) a sexual or obscene performance, or to engage in any other sexual conduct with that person or another, then the perpetrator is at least three years older than the child, or believes that they are at least three years older than the child solicited.” AODA states this language would probably eliminate the need for subsection (C).

RPG/mt