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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/08
 SPONSOR Lujan, B. LAST UPDATED 2/8/08 HB 337/aHCPAC/aHJC
 SHORT TITLE Sex Offense Victim Polygraph SB _____
 ANALYST Peery-Galon

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY08	FY09	FY10		
	\$0.1	\$0.1	Recurring	Federal Fund

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Administrative Offices of the District Attorneys (AODA)
 Public Defender Department (PDD)
 New Mexico Sentencing Commission (NMSC)

No Response Received From

Department of Public Safety

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 337 strikes the House Consumer and Public Affairs Committee amendment.

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 337 on page 1, line 21, strikes “ask or”.

Synopsis of Original Bill

House Bill 337 adds a new section to Section 30-9 NMSA 1978 stating that a law enforcement

officer, prosecuting attorney or other government official is not to ask or require an adult, youth or child victim of sexual offense to submit to a polygraph examination or other truth-telling device as a condition for proceeding with the investigation, charging or prosecution of the offense. The victim's refusal to submit to the polygraph examination or other truth-telling device is not to prevent the investigation, charging or prosecution of the offense.

FISCAL IMPLICATIONS

AODA states the proposed legislation is necessary to comply with federal requirements to be eligible for the Violence Against Women Act (VAWA) grant. New Mexico currently receives around \$3 million in federal funding from the Violence Against Women Act grant. AODA states failure to make these changes will potentially result in loss of federal funding, thus drastically reducing services to victims of both domestic violence and sexual offenses.

SIGNIFICANT ISSUES

AODA states it previously recommended taking out the words "ask or" from page 1, line 21. This recommendation was adopted by the House Consumer and Public Affairs Committee. AODA reports after checking with the federal grant administrators at the Department of Justice it was discovered that by making this change to the proposed legislation they would not consider the language to be in compliance with federal requirements to be eligible for the Violence Against Women Act (VAWA) grant. New Mexico currently receives around \$3 million in VAWA monies. AODA states failure to make these changes will potentially result in loss of federal funding which would drastically reduce services to victims of both domestic violence and sexual offenses. AODA notes the language as amended by the House Judiciary Committee is the language necessary in order for New Mexico to remain eligible for the VAWA grant.

PDD states the House Consumer and Public Affairs Committee amendment was a good ideal, and the House Judiciary Committee amendment restoring the proposed legislation to its original form raises issues.

AODA states the House Consumer and Public Affairs Committee amendment to House Bill 337 will still prohibit sex offense victims from being required to submit to a polygraph to comply with federal requirements, but leaves the flexibility necessary to be able to offer victims the option of taking a polygraph in those cases where a defendant has passed a polygraph. AODA reports this is significant and important due to New Mexico being the only jurisdiction in the United States where polygraphs are admissible.

AOC states in regards to the House Consumer and Public Affairs Committee amendment to House Bill 337 that presumably, conflicting polygraphs between defendant and victim would enable a prosecutor to continue the prosecution of the offense and would require judicial resources to be expended.

CYFD reports sexual offenses are widely considered to be underreported, in part due to the perceptions on the part of the victim that they will not be believed. Requiring a polygraph or other electronic test of a victim simply support those perceptions, particularly since polygraphs and other electronic devices for determining an individual's truthfulness are not considered admissible evidence in a court of law. CYFD states the proposed legislation is intended to encourage victims to come forward by removing the possibility of an increased burden of evidence not born by victims of other crimes.

CYFD reports that the New Mexico Children’s Code requires the department to conduct civil investigations when there is a “reasonable suspicion” of child sexual abuse, and does not require the alleged victim to submit to a polygraph examination or other truth-telling device as a condition of investigation. CYFD notes the department does not have the authority to criminally charge or prosecute, but does use civil proceedings to provide protection to the child victim and remedial services to the family.

AODA states that it has no knowledge of any law enforcement agency or prosecutors office in New Mexico that requires victims of sexual offenses to submit to a polygraph exam as a prerequisite to proceed with the investigation, charging or prosecution of a case.

AODA states it believes the proposed legislation as worded would prevent a prosecutor from even offering a victim of a sex offense the option of taking a polygraph. AODA reports this is a significant issue in New Mexico as it is the only jurisdiction in the United States that allows polygraph results to be introduced into evidence at trial. AODA states if a defendant in a sexual offense has taken and passed a polygraph the prosecutor need to have the ability to offer the victim the option of taking a polygraph to rebut the defendant’s polygraph results at trial. AODA reports to ban polygraphs entirely in these types of cases in New Mexico would result in tying the prosecutor’s hands by not being able to respond in those circumstances where the defendant has passed a polygraph potentially resulting in more cases being dismissed and fewer convictions.

PDD states that polygraphs are admissible in trial in New Mexico and references *Lee v. Martinez*, 2004-NMSC-027, 136 N.M. 166, 96 P. 3d 291. PDD notes no other alleged victim or alleged perpetrator is statutorily precluded from polygraphs, and this could possible raise equal protection problems.

NMSC reports at least several other states (California, Colorado, Connecticut, Illinois, Iowa, Oregon and Texas) have passed laws prohibiting law enforcement from requiring alleged victims of sexual offense to submit to a polygraph examination. NMSC also notes the Violence Against Women Act of 2005 prohibits law enforcement officers from asking or requiring a victim of an alleged sex offense to submit to a polygraph examination as a condition for proceeding with the investigation of such an offense.

ALTERNATIVES

AODA recommends taking out the words “ask or” from page 1, line 21. AODA notes this would allow prosecutors the ability to offer victims the option of taking a polygraph in those cases where a defendant on a sex offense has passed a polygraph.

RPG/mt