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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/29/13  
**LAST UPDATED** 03/04/13    **HB** CS/48/aHFI#1

**SPONSOR** HJC

**SHORT TITLE** No Sex Offender Use of Certain Media    **SB** \_\_\_\_\_

**ANALYST** Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Unknown	Unknown	Unknown	Recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 Adult Parole Board (APB)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Department of Health (DOH)  
 Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HFI #1 Amendment

The House Floor #1 amendment to House Bill 48 changes the definition of sex offender in Section 29-11A-3 NMSA 1978 to include persons convicted of a sex offense pursuant to state, federal, tribal or military law or who is required to register as a sex offender in any jurisdiction. The new definition also includes sex offenders required to register pursuant to the law of a foreign nation in which the US Department of State in its country reports on human rights practices has concluded that the country has an independent judiciary that generally or vigorously enforced the right to a fair trial in that nation during the year in which the conviction occurred. The amendment also amends the definition of "sex offense" under SORNA to include "as of July 1, 2013," child solicitation by electronic communication device, as provided in Section 30-37-3.2 NMSA 1978. The current definition contains no time provision regarding this offense.

Synopsis of Original Bill

The House Judiciary Committee substitute for House Bill 48 (HB 48) changes the criminal sanctions for the new crime of sex-offenders intentionally using or accessing instant messaging, chat rooms, and social networking websites, and makes it a fourth degree felony for the first offense and a third degree felony for subsequent offenses. The bill limits the crime to sex offenders required to register under SORNA from knowingly or intentionally using or accessing several enumerated types of internet interfaces that the sex offender knows allow a person under eighteen years old to access or use, if the sex offender's offense involved the use of the internet, or whose victim was under sixteen years of age.

The sex offender is required not to access a social networking website for 10 years after completing any period of incarceration and completing probation and parole. The HJC substitute adds exceptions for sex offenders who are communicating with their own children provided that the contact does not violate a condition of the sex offender's supervision. The substitute also adds an exception for offenders under the age of 21 at the time of the sex offense who were no more than four years older than the person that was solicited for sexual contact.

**FISCAL IMPLICATIONS**

The Administrative Office of the Courts (AOC) stated that the change to the definition of sex offender contained in the House Floor #1 amendment makes the definition complex and may cause additional litigation in the courts, as well as additional court time to determine if the defendant meets the definition. There is no procedure set out regarding who obtains the information from outside jurisdictions, including foreign countries and how that is done. If there is additional litigation based on this definition, there may be the need for additional resources in the judiciary.

The New Mexico Corrections Department (NMCD) provided an analysis of the fiscal impact to that agency:

The cost to incarcerate a male inmate ranges from an average of \$36,700 per year in a state owned prison to \$30,093 per year in a private prison. The cost to house a female inmate at a private facility is \$32,408 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at private facilities. The cost per client in Probation and Parole for a standard supervision program is \$2,608 per year. The cost per client in Intensive Supervision programs is \$1,068 per year.

**SIGNIFICANT ISSUES**

The Administrative Office of the District Attorneys (AODA) stated that the House Floor #1 amendment to the definition of "sex offender" to include certain foreign convictions brings the definition generally in line with the federal SORNA provisions, Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248). Some confusion may result from the amendment's inclusion of a person who is required to register as a sex offender "in any jurisdiction or register pursuant to the law of a foreign nation..." The federal SORNA provisions define "jurisdiction" to mean any state, participating tribes, Washington D.C., and U.S. territories. But New Mexico's SORNA does not define the term "jurisdiction," so it is unclear what is meant.

The AOC provided an analysis of court decisions regarding similar bills in other states:

The enactment of this legislation may lead to litigation, as some will argue that the legislation presents an overly broad and unconstitutional infringement on a person's right to free speech under the First Amendment to the Constitution of the United States and Article II, Section 17 of the Constitution of the State of New Mexico. Similar laws banning sex offenders from social media websites have been deemed unconstitutional in Louisiana and Nebraska, but upheld in Indiana. Louisiana revised its law to limit the prohibition to anyone convicted of a sex offense against a minor or of video voyeurism and to narrowly define prohibited sites and programs. The revised bill was signed into law by Louisiana Governor Jindal in late May of 2012.

The NMCD provided an analysis of significant issues:

When supervising sex offenders on probation or parole, the NMCD often prohibits these offenders, as a condition of probation or parole, from using or accessing the internet interfaces designated in this bill, at least for those sex offenders convicted of sex offenses involving minors. The bill might help better deter the sex offender's use of these interfaces during probation or parole periods because it specifically criminalizes them (makes them more than just a violation of a condition of probation or parole). What is significant about this bill is that it would permanently prohibit such use or access, even after the sex offender's probation or parole terms have ended and even if the sex offender's crime or sexual history did not involve victims who were minors.

The most current country reports on human rights maintained by the US Department of State are from 2011. This may present a challenge in administering the act since circumstances in individual counties' can change from year to year. The country reports can be found at <http://www.state.gov/j/drl/rls/hrrpt/>.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Other bills also propose changes to the Sex Offender Registration and Notification Act (SORNA). HB 570 restructures SORNA. HB 466 restructures SORNA. HB 451 and HB 452 appear to cover the same issues addressed in HB 466. HB 437 adds human trafficking to the list of offenses requiring registration under SORNA.

### **QUESTIONS**

1. How will the provisions of this bill be enforced?

EC/svb:blm