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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/15
 SPONSOR HJC LAST UPDATED 03/12/15 HB 133/HJCS
 SHORT TITLE Expand Scope of Certain Sexual Crimes SB _____
 ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Narrative	See Narrative	See Narrative	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 634.

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the District Attorneys (AODA)
- Administrative Office of the Courts (AOC)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)
- Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute to House Bill 133 adds to the definition of force or coercion to include the perpetration of criminal sexual penetration or criminal sexual contact on a child with or without the child’s consent, by a person in a position of authority, and makes concomitant changes in the criminal statutes for those crimes. It also makes these changes to certain crimes committed against children:

Criminal sexual penetration: removes the special category of fourth degree criminal sexual penetration committed on a child thirteen to eighteen years of age by a perpetrator associated with a school.

Criminal sexual contact: removes the requirement of personal injury in second degree criminal sexual contact of child thirteen to eighteen years of age when force or coercion is used. It eliminates the special category that requires both force and coercion and the perpetrator be

assisted by others in third degree criminal sexual contact. It also reduces the age limitation on fourth degree criminal sexual contact of a minor (from eighteen to sixteen) and removes the requirement that the perpetrator must be associated with a school or that force or coercion must be used. Fourth degree criminal sexual contact of a minor (like fourth degree criminal sexual penetration) now requires the perpetrator to be at least 18 years of age, four years older than the child, and not the spouse of the child.

The effective date of this bill is July 1, 2015.

FISCAL IMPLICATIONS

Additional time and resources will be needed by prosecutors, the defense and the courts given the expansion of some of these crimes and increase in penalties, both of which increase the likelihood that offenders will fight more strenuously. Removing the personal injury requirement in second degree criminal sexual contact may save the need for medical testimony about bruising and the like, since children heal quickly and often do not report incidents promptly enough to document injuries for reasons unrelated to the truthfulness of their experience. Because this bill expands the scope of criminal sexual penetration, NMCD estimates it may result in a minimal increase in its prison population and probation/parole cases. In light of these different factors, the fiscal impact of this bill is difficult to predict or quantify.

SIGNIFICANT ISSUES

Based on AODA's earlier analysis, it appears that victims of criminal sexual contact by a perpetrator who is associated with a school who are minors age 16 to 18 will no longer have the protection of strict liability, but will have to demonstrate force or coercion or use of a deadly weapon. It comments that this strict liability clause was originally implemented in response to many situations around the state where school officials were involved, and the rest of the statute failed to protect. AODA reported that in fact there have been numerous prosecutions where this clause has been invoked, and asserted that the removal of this protection seems a step backwards.

PDD provides these comments:

The expansion of liability in the criminal sexual contact statute may create unintended consequences. It eliminates the requirement that the defendant be a school employee. This requirement defined a narrow purpose for this crime, which is here expanded to apply based on the age of the minor and the age difference between the minor and the accused. Thus, this bill would narrow the applicable age limit of the minor from 18 to 16; and require the accused be at least four years older and not be the spouse of the minor. It also would eliminate the requirement that the touching be a result of force or coercion.

The resulting, expanded criminal offense would appear to mean, for example, that if a fifteen year old girl were with a nineteen year old boy and the boy touched the girl's fully clothed body on the breast area or buttocks, even with her consent or encouragement, the boy would be guilty of a fourth degree felony.

Accusations of "sexual crimes," much less prosecution, could have severe consequences on the life of the young person charged. Given the definitions, the new crime could apply to defendants as young as 17 (four years older than a 13-year-old), 18, 19, or 20 (four

years older than a sixteen year old). It may be considered how many children of this age, even if those 18 and older are subject to prosecution as adults, have fully developed the capacity to foresee the consequences of behavior in the heat of the moment.

Impulsivity would not excuse the use of force or coercion under the current statute. However, the proposed changes would permit a felony prosecution even where the alleged conduct was not unwanted or unwelcomed and resulted in no physical or emotional harm to the other young person involved. Given the nature of the crime, any conviction also would have life-long consequences regardless of the sentence imposed – giving rise, now and in the future, to the requirement that the person register as a sex offender.

RELATIONSHIP

This bill is related to SB 634, which amends the criminal sexual penetration and criminal sexual contact statutes to eliminate some mandatory minimum sentences.

OTHER SUBSTANTIVE ISSUES

NMCD comments that less direct, more global savings are often overlooked in the fiscal analysis of public safety bills. For example, should the expansion of the scope of the crime of criminal sexual penetration increase the public's sense of safety and reduce crime victimization, a host of savings for the state, ranging from the lessening of the expenses and impact of crimes upon victims (loss of productivity, physical and mental health expenses, and loss of quality of life), costs associated with victim support and advocacy services, court costs to adjudicate offenders, and the impact of higher crime rates upon economic recovery, would also be realized and could reasonably offset the more direct and tangible costs involved in prison management. Intentional enforcement, prevention, and intervention balanced with adequately supported prison management and correctional programming is essential for effective public safety planning.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AODA pointed out that prosecutors will continue to have to prove physical injury in some cases, but would have the assistance of strict liability in certain criminal sexual contact cases.

MD/bb