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FISCAL IMPACT REPORT

SPONSOR	<u>HJC</u>	ORIGINAL DATE	<u>1/30/15</u>		<u>142/HJCS/aHF1</u>
		LAST UPDATED	<u>3/19/15</u>	HB	<u>#1/aSJC</u>
SHORT TITLE	<u>Unauthorized Distribution of Sensitive Images</u>				SB _____
		ANALYST	<u>Chenier</u>		

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AODA)

New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the House Judiciary Committee Substitute for House Bill 142 makes minor technical changes and clarifies that unauthorized distribution of sensitive images includes “conduct such that it would cause a reasonable person to suffer substantial emotional distress”.

Synopsis of HF1 Amendment #1

The Senate Floor Amendment #1 to the House Judiciary Committee Substitute for House Bill 142 would insert a new paragraph clarifying that intimate act has the same meaning as sexual act pursuant to Section 30-9-2 NMSA 1978. The amendment also adds to the definition of sensitive images to include the phrase: "depicting or simulating an intimate act or depicting" any portion of a person’s genitals...

Synopsis of HJC Substitute

HB 142 would create a new statute within the criminal code prohibiting and penalizing the distribution or publication of images by electronic device or other medium, in an effort to harass the person depicted in the image or to cause that person to be harassed or injured. Sensitive

images are defined as those of a person whose genitals are exposed or of a woman if any area of her breast below the top of her areola is exposed. The conduct, upon conviction, would constitute a misdemeanor. However, subsequent offenses by the same person would result in that person being convicted of a fourth degree felony.

The committee substitute would also define the terms “information service” and “interactive computer service” and states that “telecommunications provider” has the same meaning as in 63-7-23 NMSA 1978. The bill also adds a new section to clarify that nothing in the section shall be construed to impose liability on an interactive computer service, an information service, or a telecommunications provider for content.

FISCAL IMPLICATIONS

The average cost to house an NMCD inmate in 2013 was \$97.62 per day or \$35.6 thousand annually. The cost to house inmates varies depending on custody level and whether the inmate is housed in a private or public facility. The average annual probation and parole cost is \$2,783 for standard supervision, \$2,563 for Intensive Supervision programs, and \$3,664 for community corrections.

The PDD provided the following:

Because this will be a new crime, it is difficult to assess how much more workload might be created for courts, prosecutors, and the PDD. However, we expect a notable number of persons charged with this crime soon after its inception; perhaps the greatest numbers seen in children’s court. Consequently, while it is impossible to predict the number of such prosecutions, PDD estimates this bill would bring about an increase in case work around the state, requiring one additional operating level PD hired at the PD3 level. A PD3 would require an annual budget increase of \$89.3 thousand, which includes salary, benefits, and operational costs. There would include a non-recurring start-up cost of \$2.5 thousand.

SIGNIFICANT ISSUES

The substitute clarifies that the criminal provisions in the bill do not extend to service providers or to persons who disseminate sensitive images with a “legitimate public purpose,” such as the press.

The Legislature of the State of California recently passed similar legislation that provides for a person who intentionally distributes an image, as described, of the intimate body part or parts, as defined, of another identifiable person, or an image of the person depicted engaging in specified sexual acts, under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress, is guilty of disorderly conduct. The California bill also provided that it is not a violation of this provision to distribute the image under certain circumstances, including where the distribution is made in the course of reporting an unlawful activity.

The bill makes other technical and clarifying changes.

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The PDD stated that “in its earliest prosecutions, this bill would likely result in high percentage of these prosecutions requiring jury trials.

EC/je/aml/je/bb/