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FISCAL IMPACT REPORT

SPONSOR Candelaria **ORIGINAL DATE** 2/14/15
LAST UPDATED _____ **HB** _____

SHORT TITLE Internet Crimes Against Children Fund **SB** 380

ANALYST Chenier

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	Unknown	Unknown	Recurring	Internet Crimes Against Children

(Parenthesis () Indicate Revenue Decreases)

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

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General’s Office (AGO)
- Public Defender Department (PDD)
- New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

Senate Bill 380 establishes a new \$140.00 fee, charged to a convicted sex offender upon registration with a county sheriff pursuant to Section 29-11A-4 NMSA 1978, and if the sex offender is unable to pay is required to set up a payment plan – with all fees collected transferred to the internet crimes against children fund.

The bill also establishes the internet crimes against children fund, to be administered by AGO, with money in the fund appropriated to AGO for costs related to the investigation of internet crimes against children.

FISCAL IMPLICATIONS

This bill creates a new non-reverting fund called the internet crimes against children fund. Money in the fund will come primarily from convicted sex offenders upon registration with a local county sheriff pursuant to Section 29-11A-4 NMSA 1978. Money in the fund is appropriated to the AGO for costs related to the investigation of internet crimes against children.

AOC stated that:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes, and for the development of appropriate language to be contained in the written notice of the duty to register provided to sex offenders upon conviction regarding the SB 380 registration fee. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, including required court enforcement of a payment plan established with DPS for a sex offender who cannot pay the \$140 fee in full upon registration. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

This bill creates a new fund and provides for continuing appropriations. The LFC has concerns with including continuing appropriation language in the statutory provisions for new, created funds as earmarking reduces the ability of the Legislature to establish spending principles.

SIGNIFICANT ISSUES

PDD provided the following:

The money raised for the Fund does not come simply from fees charged to those who commit “Internet Crimes Against Children,” but from any person required to register under SORNA. Many of the crimes committed by individuals required to register under SORNA will have had nothing to do with the internet and will not have involved child victims. While it is true that individuals required to register under SORNA often have committed crimes society finds morally abhorrent, there are many other crimes of equal or greater moral turpitude that are not covered under SORNA. It is unclear whether it is fair or wise to single out a subpopulation of convicted felons as a source of government funding when their crimes are unrelated to the remedial goals of the legislation.

Also, it appears that each time a registered sex offender changes his or her residence it will cost an additional \$140 registration fee. This burden will fall more heavily on someone who changes jobs or residences more frequently, but the purpose of the Fund has nothing to do with any increased administrative costs to law enforcement posed by changes of residence or employment. SB 380 thus appears to arbitrarily pick out some offenders and impose additional financial burdens on them for reasons having nothing to do with the purpose of the proposed legislation. Additionally, by discouraging people from changing residences and employment, it may tend to discourage activities that are

otherwise conducive to an individual's chances at continued rehabilitation by leaving the person feeling trapped in his or her current situation.

The AGO provided the following:

As drafted, there is ambiguity as to whether the \$140 fee created by proposed subsection (F) is a one-time fee that would only apply to sex offenders upon their first registration for offenses committed after the effective date of this amendment, or if the \$140 fee will be assessed retroactively upon all existing sex offenders every time they register in a county within New Mexico. Subsection (B) of the current statute provides that a resident of New Mexico "shall initially register" in the county where the sex offender resides within 5 days of release from custody or being placed on probation or parole. This subsection also provides that a sex offender who changes residence to New Mexico must register within 5 days after arrival. This subsection would be amended to include a \$140 fee upon "initial" registration. Subsection (D) applies the same fee to out-of-state sex offenders working or attending school in New Mexico. If this registration fee is intended to be proactive (applying to sex offenders convicted of a crime causing their required registration after the effective date of this amendment), no significant issues regarding retroactive application exist. If the \$140 fee is intended to apply retroactively to sex offenders convicted before the effective date of this legislation, SB 380 may need to be amended to clarify that it does not require an ex-post facto fine, but rather a fee upon registry in a new county.

ADMINISTRATIVE IMPLICATIONS

There is no guidance in SB 380 regarding enforcement of the registration fee obligation, either to be paid in full upon registration as a sex offender or per the terms of a payment plan. It is possible that DPS-established rules will require court enforcement of a payment plan established with DPS for a sex offender who cannot pay the \$140 fee in full upon registration.

RELATIONSHIP

This bill is related to HB 237 (enacting the Child Protection Registry Act and creating the Child Protection Registry and the Child Protection Registry Fund, with money in the fund appropriated to the AG to establish, operate and administer the registry and to enforce the Act.)

EC/bb