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FISCAL IMPACT REPORT

SPONSOR SPAC ORIGINAL DATE 03/16/15
LAST UPDATED 03/17/15 HB _____
SHORT TITLE Sex Crime Victim Rights & Reparations SB 645/SPACS
ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$ 150.0				General

(Parenthesis () Indicate Expenditure Decreases)

Conflicts HB 528.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Human Services Division (HSD)
Office of the Attorney General (AGO)

No Response Received

Department of Public Safety (DPS)

SUMMARY

Synopsis of SPACS Substitute

Senate Bill 645 as substituted by the Senate Public Affairs Committee would amend Section 29-11-1, NMSA 1978, the Sexual Crimes Prosecution and Treatment Act. The committee substitute is a considerably less complex bill than the original.

CS/645 changes the title of the act to: "Relating To Crimes; Amending The Sexual Crimes Prosecution And Treatment Act To Provide For Additional Rights For Victims Of Sexual Crimes; Declaring An Emergency" reflecting the change in scope of the committee substitute.

CS/645 amends the definition of "administrator" to clarify that it is the director of the health services division of the HSD.

It then adds definitions for “forensic medical examination,” which was previously not defined in current statute. CS/645 then distinguishes between a “sex crime collection kit” and an “untested sex crime collection kit. The untested kit is one that has not been submitted to the state crime lab or similar lab for either serology or DNA testing.

CS/645 in Section stipulates that the rights enumerated in the proposed act are supplemental to the rights included in the Victims of Crime Act.

CS/645 requires the AGO in conjunction with a statewide coalition working to end sex crimes to:

- Establish, implement and complete a process for conducting an inventory of all sexual crime collection kits and forensic evidence;
- Report the results of the inventory to the New Mexico legislative council to forward to the appropriate legislative interim committee that studies courts, corrections and justice-related issues;
- Create standards for what evidence must be submitted to any crime laboratory in New Mexico;
- Create time frames for when the evidence must be submitted, analyzed and compared to DNA databases;
- Create victim notification and consent procedures and forms that include:
 - (a) Standards for consent for the collection, testing and release of test results of the forensic medical evidence; and
 - (b) Consent forms that clearly and plainly:
 - 1) Explain the potential effects of each step of the process, including collection, testing and release of test results, and require acknowledgment of consent for each step of the process;
 - 2) Give the victim the right to withdraw consent at any point in the process;
 - 3) Explain when and how results of tests may be released and for what purposes; and
 - 4) Set forth the date by which a law enforcement agency must analyze its backlog of forensic medical evidence if it does not forward such evidence to the appropriate crime laboratory;
- Create recommendations on how long to store untested sexual crime collection kits;
- Create recommendations on how to destroy untested sexual crime collection kits;
- Create recommendations on how to destroy sexual crime collection kits from other cases; and
- Create recommendations concerning any changes or clarifications to the procedures set forth in Section 30-9-19 NMSA 1978.

Further, CS/645 requires that the inventory produced shall include a report containing:

- The number of untested sexual crime collection kits in the possession of each law enforcement agency in the state; and
- The date the sexual crime collection kits reported in the inventory were collected.

CS/645 carries an emergency clause.

FISCAL IMPLICATIONS

SB 645 carries no appropriation. Its fiscal impact upon the AGO is substantial and estimated to be \$150.0 thousand in FY 16:

In order to perform the requirements of SB 645, the AGO would need at least 3 additional staff members. The AGO would need at least 1 attorney FTE, 1 support staff FTE, and 1 Investigator FTE.

It would require travel money to consult with representatives of the statewide coalition to include per diem and hotel. It would also require travel money to investigate the number of untested sexual crime collection kits in the possession of each law enforcement agency in the state.

The fiscal impact on the AGO would be approximately \$150,000 for August 1, 2015 to October 31, 2015.

AODA analysis states:

It is unknown whether the district attorneys will have additional costs. It is likely that the district attorneys will participate in the “coalition,” although that is not clear in the bill.

CS/645 provides no appropriation to cover costs for the district attorneys or for any of the other agencies that will have additional responsibilities under SB645s.

SIGNIFICANT ISSUES

SB 645 would create a distinction between crime kits and untested sexual crime collection kits. This distinction is necessary to deal with the potential backlog of kits that have been collected but have not been processed. This has been a significant problem identified throughout the United States, most notably in Detroit, Michigan where a backlog of thousands of untested rape kits going back decades was discovered.

Currently, there is no reliable data on how many untested rape kits there are in New Mexico. In previous analysis of the original bill, DPS stated that “estimates could range from a couple of thousand to tens of thousands of untested kits.”

This legislation attempts to remedy this problem by providing for the AGO, working in consultation with “representatives from a statewide coalition working to end sex crimes” to complete a report by October 31, 2015 for transmittal to the legislative council.

PERFORMANCE IMPLICATIONS

Since the bill carries an emergency clause, work could presumably begin immediately

AGO analysis states:

This substitute bill requires the Attorney General’s Office to implement a process for conducting inventory of crime collection kits, create standards and establish

recommendations related to sexual crime collection kits, and create victim notification and consent procedures and forms but does not provide any funding for additional staff, which may impact the agency's other performance based budget targets.

AOC analysis states:

The deadline of October 31, 2015 for the Attorney General's office, in conjunction with a statewide coalition working to end sexual violence, to "establish, implement and complete a process for conducting an inventory of all sexual crime collection kits and forensic evidence" seems rather ambitious. Although it is important to deal with the backlog of untested rape kits as expeditiously as possible, it is equally important that the time frames and standards are created after thoughtful and careful consideration before being recommended.

AODA analysis concurs:

SB645s requires the Attorney General and the coalition to do a significant amount of work by October 31, 2015. That deadline will be difficult or impossible to meet, and will require coordination and cooperation among agencies. The Attorney General and the participating agencies are not given any funding for this work.

CONFLICT

CS/645 now conflicts with HB 528 which was its duplicate.

OTHER SUBSTANTIVE ISSUES

DOH in previous analysis of the original bill points out the frequency of sex crimes in New Mexico and how under-reported they are:

According to Sex Crimes In New Mexico XII: An Analysis of 2013 Data from The New Mexico Interpersonal Violence Data Central Repository (Caponera 2014), there were 4,058 sex crimes involving 4,220 survivors that came to the attention of statewide law enforcement agencies in 2013. The rate of law-enforcement reported criminal sexual penetration for New Mexico in 2013 was 0.77 per 1000 persons.

However, self-report data indicates that 21% of women in New Mexico, and 4% of men, have been raped during her or his lifetime (Caponera, SEX CRIMES IN NEW MEXICO V: An Analysis of Data from The Survey of Violence Victimization in New Mexico, 2005.) This indicates that sexual assault is a drastically underreported crime. Under-reporting of sexual assault fosters the belief that sexual assault is not a substantial issue in New Mexico.

Of women who reported their sexual assault to law enforcement in 2013, only 33% were referred to services (victim assistance, medical clinic, legal aid or shelter). Forty-nine percent of female rape victims reported being dissatisfied with the police response to their reported rape, and one-third of those, very dissatisfied (Caponera, 2013).

Male victims who reported their sexual assault to law enforcement in 2013 were half as

likely as female victims to be referred to services, such as victim assistance, a medical clinic, legal aid or a shelter. Three quarters (74%) of male rape victims reported being dissatisfied with police response to their reported rapes and two-thirds of these, very dissatisfied. Six times more males than females report that they want the police to take their complaint more seriously.

The low rate of referral for services by law enforcement and the high rate of dissatisfaction with law enforcement responses point to a need for the law enforcement provisions that SB 645 sets forth, and for the increased collaboration between law enforcement and the statewide sexual violence coalition.

AMENDMENTS

It would be helpful to define the “statewide coalition working to end sex crimes” to which the bill refers. Neither a Google search nor a search of statutes revealed any group with that specific name.

CAC/bb/aml/bb