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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/26/2020

SPONSOR McQueen LAST UPDATED \_\_\_\_\_ HB 43

SHORT TITLE Sex Offender Registration Requirements SB \_\_\_\_\_

ANALYST Glenn

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

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Indeterminate-See Fiscal Implications				Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Law Officers of the Public Defender (LOPD)  
 Administrative Office of the Courts (AOC)  
 New Mexico Attorney General (NMAG)

#### No Response Received

Administrative Office of the District Attorney (AODA)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

House Bill 43 amends the Sex Offender Registration and Notification Act (“SORNA”) by:

- making the Act applicable to residents of other states who have been convicted of a sex offense, but who are physically present in New Mexico for more than ten consecutive days or for a total of more than twenty days during any calendar year; and
- adding to the list of offenses considered a “sex offense” for purposes of the Act any other conviction that would require registration as a sex offender in the jurisdiction where the offense was committed. This “catch-all” provision is intended to incorporate offenses not currently considered registrable sex offenses in New Mexico, but which other jurisdictions – e.g., federal, state, military and tribal – consider to be sex offenses requiring registration.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

## **FISCAL IMPLICATIONS**

AOC states that HB 43, if enacted, would require more offenders to register as sex offenders, who will potentially be subject to SORNA's fourth degree felony penalties. Offenders who may be subject to felony penalties may invoke their right to trial by jury. More trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification. AOC also notes there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law, commenced prosecutions, and appeals from convictions. 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.

LOPD states that HB 43 would require commensurate resources to those needed by the courts and district attorneys to render constitutionally mandated effective assistance of counsel. The expanded application of SORNA to persons who do not regularly live in New Mexico and the inclusion of persons convicted of a crime not expressly enumerated under SORNA will likely result in additional cases of failure to register (a felony charge) and additional defendants who require representation from the public defender department. While the department would be able to absorb some of the cases, any increase in the number of such charges would require a concomitant increase in resources for LOPD to comply with the constitutional mandates of providing effective assistance of counsel.

## **SIGNIFICANT ISSUES**

LOPD notes that HB 43's amendments would apply the registration requirement to any and all short-term visitors (as few as 10 consecutive days under this bill or a total of 20 days within a year), including tourists and individuals visiting family or friends over the holidays. To convict a person with the felony crime of failure to register, SORNA requires the person to have notice of their registration obligations. It is unclear how these individuals would be provided the required notice, which may make enforcement difficult. LOPD further observes that the "catch-all" provision regarding out-of-state sex offense convictions could lead to uncertainty and litigation about whether someone's out-of-state offense requires registration.

The Uniform Statute and Rule Construction Act provides that for purposes of computing a period of time allowed by statute, a "day" begins immediately after midnight and ends at the next midnight. Section 12-2A-7(G) NMSA 1978. This statutory definition of "day" may address questions about HB 43's effect on persons, such as truck drivers, who are required by their jobs or for other reasons to travel through the state frequently.

According to NMAG, at least ten other states have statutory provisions that require registration if a person is required to register as a sex offender under the laws of another state: Alabama, Alaska, Connecticut, Georgia, Kentucky, New York, Pennsylvania, Tennessee, Utah, West Virginia, and Wisconsin.

NMAG also notes that because HB 43 is aimed at requiring individuals to register in New Mexico if they have to register somewhere else, the impact of this bill necessarily will depend on other states' statutes. For example, in California it is possible for an individual to be required to register as a sex offender after urinating in public, if the offense is charged as aggravated indecent exposure (*see In re Dustin A.*, No. F071941, 2017 WL 4250648, at \*1 (Cal. Ct. App. Sept. 26, 2017) (unpublished decision)).

### **PERFORMANCE IMPLICATIONS**

AOC states that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

### **ADMINISTRATIVE IMPLICATIONS**

NMAG states that it expects little or no administrative impact, since sex offender registration is overseen by local sheriff departments.

### **TECHNICAL ISSUES**

NMAG observes that, as currently drafted, HB 43 requires registration for a conviction that “would cause an individual to be registered as a sex offender” in another jurisdiction. NMAG suggests changing the words “would cause” to “caused” to make clear that anyone who has been convicted and required to register as a sex offender in another jurisdiction must register as a sex offender in New Mexico.

BG/al