

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____ **Date** 2/4/2015
Correction _____ **Substitute** _____ **Bill No:** SB 151

Sponsor: Sen. Mimi Stewart **Agency Code:** Attorney General's Office
Short _____ **Person Writing** James Torres, AAG
Title: Sex Offender Parole Conditions **Phone:** 827-6064 **Email** jtorres@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis:

SB 151 amends and modifies Section 31-21-10.1 NMSA 1978 relating to sex offender parole. First, SB 151 would add “child solicitation by electronic communication device” to proposed subsection (A)(1) requiring a mandatory minimum of 5 years and maximum of 20 years supervised parole. Subsection (C) would require that risk assessments for determining parole conditions be conducted by a licensed mental health clinician on contract with the human services department. Separate risk assessments may be conducted by the attorney general and the sex offender at each party’s expense. In order to maintain supervised parole beyond 5 years, subsection (D) would require the attorney general to show that the sex offender has not progressed with treatment or has failed to comply with conditions of release. Subsection (E)(5) would require a use immunity agreement if polygraph examinations are required under conditions of parole. Finally, if a sex offender parolee is re-incarcerated, the board must review the sex offender’s eligibility to be released annually thereafter. A full review hearing will be required before the sex offender serves a term of 5 years.

FISCAL IMPLICATIONS

SB 151 allocates no appropriation for the funding of the licensed mental health clinician required for every risk assessment in subsection (C). There are also no appropriations allocated to the Attorney General to conduct independent risk assessments. Requiring a formal risk assessment in all cases has significant cost implications for the Office of the Attorney General based on the volume of yearly parole hearings and would require the Office of the Attorney General to obtain a risk assessment in every case because of the inherent danger of sex offenders and need to protect the community. Reliance on a contract clinician alone would be insufficient because the report or findings will almost always be contested by the sex offender if the clinician recommended continued supervision, thus requiring the Attorney General’s Office, under the structure of this legislation, to provide a second expert opinion swaying the board. Alternatively, if the HSD clinician found minimal risk, and the sex offender did not contest the finding, the Office of the Attorney General would essentially serve as the provider of a second opinion regarding possible risk to the community.

Based on a modest estimation of twenty-one hearings a year, and minimal expert fee of \$250 an

hour and at least three hours of expert time which would include conducting a risk assessment, drafting a report, and providing testimony at subsequent hearing, the cost to the Attorney General's Office would be at least \$15,750 and could be higher than \$25,000 depending on the specifics of each case, an expert's hourly rate, and amount of materials subject to review by the expert.

SIGNIFICANT ISSUES

While SB 151 adds child solicitation by electronic communication device to the list of offenses eligible for a minimum of 5 years supervised parole, it otherwise reduces safeguards for the community in sex offender oversight protection. The bill creates a low standard for a sex offender to achieve release from parole. Subsection (D) requires the attorney general to demonstrate that a sex offender has made *no* progress with treatment or rehabilitation to remain on supervised parole. Therefore, if a sex offender makes *any* perceivable progress, the sex offender will be removed from supervised parole. With such a high burden placed upon the attorney general, it may become very rare for a sex offender to remain on parole more than 5 years. This heightened standard undermines the legislative intent behind enactment of the indeterminate period of parole, as codified in Section 31-21-10.1(A). The legislature enacted this statute because it deemed offenders of certain crimes to be inherently dangerous. These crimes include criminal sexual penetration of a minor (Section 30-9-11), kidnapping (Section 30-4-1) with the intent to inflict a sexual offense, criminal sexual contact of a minor (Section 30-9-13), and sexual exploitation of children (Sections 30-6A-3; 30-6A-4). Due to the threat posed to our community, the legislature determined that these sex offenders required indeterminate supervision. SB 151 undercuts this community safeguard.

Furthermore, SB 151 allocates no appropriation for the funding of the licensed mental health clinician required for every risk assessment in subsection (C). There are also no appropriations allocated to the attorney general to conduct independent risk assessments.

Finally, the requirement of a use immunity agreement for the results of polygraph examinations limits the State's ability to hold sex offenders accountable for their crimes and protect the citizens from those that are admittedly still committing sexual offenses.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Addressed above

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS