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JOINT REVIEW COMMITTEE ON CRIMINAL PENALTIES

COMMITTEE REPORT -- 2009 SENATE BILL 14

[Introduced by Senators Lassa, Taylor, Sullivan, Coggs, Olsen, Lazich, A. Lasee, Darling and Plale, cosponsored by Representatives Cullen, Zepnick, A. Williams, Sinicki, Staskunas, Gundrum, Kerkman, Ziegelbauer, Berceau, Townsend, Spanbauer, Vruwink, Strachota, Barca, Turner and Soletski]

Background

2009 Senate Bill 14 ("bill") was introduced in the Senate on January 26th, 2009 by Senator Julie Lassa. The bill expands the scope of an existing crime by providing a broader definition of "sexual intercourse" in the existing statute prohibiting incest.

The bill received a unanimous recommendation for passage (5-0) on February 12th from the Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, & Housing. On March 23rd, Senator Lena C. Taylor, chair of the standing committee to which the bill was referred, requested a report of the Joint Review Committee on Criminal Penalties on the bill pursuant to s.13.525(5)(a) & (b). This section of statutes requires a report to be prepared concerning all of the following:

1. The costs that are likely to be incurred or saved by the department of corrections, the department of justice, the state public defender, the courts, district attorneys, and other state and local government agencies if the bill is enacted.
2. The consistency of penalties proposed in the bill with existing criminal penalties.
3. Alternative language needed, if any, to conform penalties proposed in the bill to penalties in existing criminal statutes.
4. Whether acts prohibited under the bill are prohibited under existing criminal statutes.

This report addresses these statutory points.

Costs or savings

The bill received fiscal estimates from four different agencies – the Director of State Courts (CTS), the State Prosecutor's Office (DA), the Department of Justice (DOJ), and the State Public Defender (SPD). In addition costs to county units of government are addressed in the fiscal estimates.

The **Department of Corrections** did not submit a fiscal estimate of costs or savings to the bill.

DOJ – Increase costs, no savings

The agency notes that the bill may increase costs to state for criminal litigation and appeals counsel in these cases and such an increase may be absorbed in the current budget. DOJ is not able to estimate the increase in the number of cases.

SPD – Increase costs, no savings

The agency indicates that the bill will increase caseload on the part of the public defender's office. The SPD does not expect to realize any savings from the bill. Over the past three years, SPD has participated in 13 cases charged under the affected statutes.

CTS – Increase costs, no savings

The director's office indicates that costs will increase to the agency but may be absorbed within their current budget. The numbers of cases that would be generated by this bill is very small. Without reliable caseload data, the office believes it may be able to absorb the costs within the current operating budget.

DA – No increase in costs, no savings

The office reports no increase in costs or savings associated with this bill. The agency notes, *"These crimes, commonly involving children, would otherwise be charged under other subsections of Chapter 948. This bill will enable prosecutors to more appropriately charge and label these offenders, improve how children are questioned at trial, and accordingly should not pose any measurable fiscal impact on the DA program."*

Other state agencies – No other state agencies issued fiscal estimates on this bill.

Local governments (counties) are expected to have increased costs under the CTS and SPD fiscal estimates due to the increase caseload, but an estimate of case numbers is not provided. In the absence of concrete caseload numbers, local units of government may be able to absorb costs with current operating budgets.

It is important to note that these fiscal estimates are all generated on *assumptions* of caseload increases. Agencies agree that the number of cases charged under the existing statute is small. Context should be provided that the increased costs are proportional to the amount of cases charged under the statute. It should be stated that *increased costs may occur* and may be absorbed within agencies current budgets. There are *no savings* associated with the bill.

Consistency of penalties

This bill does not change the penalty for crimes of incest. The bill expands the criminal acts that can be charged under this section to include those involving acts defined as “sexual intercourse” under s.948.01(6). In this expansion, the Class F Felony is *consistent with current incest statutes*.

Current statutes (s.944.06) declare:

“Whoever marries or has nonmarital sexual intercourse with a person he or she knows is a blood relative and such relative is in fact related in a degree within which the marriage of the parties is prohibited by the law of this state is guilty of a Class F felony.”

Alternative suggestions

As this bill does not change the current penalty structure, there is *no need for alternative language* to conform the existing and proposed statutes.

Duplication in statutes

In reviewing the statutes and the bill there is *not a clear duplication* for the crime of incest that exists. The prohibition of incest is found in s.944.06 and the prohibition of incest with a child is found in s.948.06. Other than those two statutory references, incest is not elsewhere specifically prohibited.

Findings of the committee

The Joint Review Committee on Criminal Penalties finds that 2009 Senate Bill 19 appropriately maintains the current penalty structure for crimes of incest without need for alteration and does not duplicate existing criminal statutes. The committee further finds the bill may increase state and local costs based on the assumptions of affected agencies, but a reliable estimate is impossible to provide with the data available to the committee. Further the increase in costs is proportional to the amount of charges filed under the incest statute, which is historically small, and agencies will be more than likely able to absorb the costs.