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**AGENCY BILL ANALYSIS
2019 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**
Correction **Substitute**

Date Jan. 26, 2019
Bill No: HB307

Sponsor: Kelly K. Fajardo
Short Title: Criminal Sexual Contact with A Minor Penalty

Agency Code: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB307 amends NMSA 1978, Section 30-9-11, Criminal Sexual Penetration, and NMSA 1978, Section 30-9-13, Criminal Sexual Contact of a Minor, increasing the penalties and expanding the reach of the statutes. HB307 also amends sections of the Sex Offender Registration and Notification Act.....

Criminal Sexual Penetration. Section 1 amends the Criminal Sexual Penetration (CSP) statute regarding CSP committed on a child thirteen to eighteen years of age.

It redefines CSP in the first degree to include all CSP perpetrated:

- “On a child thirteen to eighteen years of age;
- (a) by the use of force or coercion;
 - (b) when the perpetrator is in a position of authority over the child; or
 - (c) when the perpetrator is armed with a deadly weapon.”

The punishment is a minimum term of imprisonment of eighteen years, which shall not be suspended or deferred. Sentencing enhancements may be imposed.

CSP in the second degree consists of all CSP perpetrated on a child thirteen to eighteen years of age not otherwise specified in the section.

HB307 raises the penalties for CSP in the third degree, making them all third degree felonies instead of fourth degree felonies. CSP on a child thirteen to sixteen when the perpetrator is at least eighteen and is at least four years older than the child, and CSP on a child thirteen to eighteen when the perpetrator is a school authority figure receives a higher penalty than the basic sentence for a third degree felony: the perpetrator shall be sentenced to a minimum term of imprisonment of six years, which shall not be suspended or deferred, but which may be subject to sentence enhancements.

Criminal Sexual Contact. Section 2 amends the Criminal Sexual Contact of a Minor (CSCM) statute.

HB307 creates a new statutory structure for CSCM:

First degree CSCM consists of CSC

- Of the unclothed intimate parts of a child under thirteen;
- Or CSC on a child under eighteen by a person in a position of authority and uses that authority to coerce; the perpetrator uses force or coercion that results in personal injury to the child' the perpetrator uses force or coercion and ins aided or abetted by one or more persons; or the perpetrator is armed with a deadly weapon.

It is a first degree felony, subject to a minimum term of imprisonment of eighteen years.

Second degree CSCM consists of all CSC of a child under thirteen. It is a second degree felony for a sexual offense against a child, subject to a sentence of a minimum term of imprisonment of fifteen years.

Third degree CSCM consists of CSC of a minor perpetrated by a school authority. It is a third degree sexual offense against a child, subject to a minimum term of imprisonment of six years.

None of the sentences may be suspended or deferred; all the sentences may be subject to sentence enhancements.

Two Violent Sexual Offense Convictions. Section 3 amends Section 31-18-25 NMSA 1978, the “two strike” rule, to add criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age to the list of offenses covered. (Under the statute, when a defendant is convicted of a second violent sexual offense, the defendant shall be punished by life imprisonment.)

Sex Offender Registration and Notification Act. Sections 4 through 6 amend the Sex Offender Registration and Notification Act so that it conforms to the degrees of CSP and CSCM set out by HB307. HB307 also expands the contact radius: under current law, the county sheriff must contact every licensed daycare center, elementary school, middle school and high school within a one mile radius of the sex offender’s residence and provide them with the sex offender’s registration information. HB307 expands the radius to five miles.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

Fiscal implications for the district attorneys are unknown. Higher potential penalties may result in more cases going to trial, or may result in more plea agreements to lesser charges.

To the extent HB307 results in increased incarceration, it will result in increased costs to the state.

SIGNIFICANT ISSUES

Criminal Sexual Penetration

Section 1 of HB307 makes it a first degree felony to commit the crime of CSP of a child thirteen to eighteen years of age when the perpetrator uses force or coercion, is in a position of authority over the child or when the perpetrator is armed with a deadly weapon. A first degree felony carries a potential sentence of eighteen years. (Committing CSP on a child thirteen to eighteen years of age by the use of force or coercion is a first degree felony under the existing statute only if the force or coercion results in great bodily harm or great mental anguish to the victim; otherwise, it is a second degree felony.)

HB307 leaves in place language which is currently in Paragraph G(2) of the statute (renumbered to be Paragraph F(3) of the statute), which makes CSP on a child thirteen to eighteen a felony “when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.” (HB307 raises the crime from a fourth degree felony to a third degree felony, and increases the penalty, but leaves the definition of the offense unchanged.) The existing definition of the crime can lead to interpretation issues, and create problems for prosecutors determining which crime(s) to charge. Consider a middle-school teacher who commits CSP on a child in his or her class. Is that a first degree CSP by a person “in a position of authority over a child,” punishable by a sentence of eighteen years, or is it only a third degree felony, punishable by six years, under the more specific provisions that apply to school personnel? Why is there such an extreme gap in potential sentences between the two crimes?

Increasing the confusion is the change made by HB307 to subparagraph E(1) of the statute. Currently, it defines CSP in the second degree as all CSP perpetrated by the use of force or coercion on a child thirteen to eighteen years of age. (If the force or coercion resulted in great bodily harm or great mental anguish, the crime would be a first degree felony.) HB307 changes the provision, removing the language regarding force and coercion, and stating that CSP in the second degree is all CSP perpetrated “on a child thirteen to eighteen years of age not otherwise specified in Subsection D of this section.” (Emphasis added.) Subsection D defines first degree CSP. This suggests that CSP on a child 13 to 18 is either a first degree felony or a second degree felony. But paragraph F(3), described above, sets out third degree CSP crimes against children 13 to 18. So, is CSP by a middle-school teacher a first degree felony under Subsection D (perpetrated by a person in a position of authority over the child), a second degree felony (if the proof on “position of authority” is not sufficient, because Subsection E covers all CSP on 13-18 year olds not specified in Subsection D), or does it fall to a third degree felony under the more specific provisions of Subsection F(3)?

Criminal Sexual Contact of a Minor

Section 2 of HB307 raises the level of each offense described in the Criminal Sexual Contact of a Minor statute and increases the penalties. It expands the age range of the victim in what will now be first degree Criminal Sexual Contact of a Minor (CSCM), to include all CSCM on a child under eighteen under certain conditions (such as when the perpetrator is in a position of authority and uses coercion, or the perpetrator uses force or coercion that results in personal injury to the child, or the perpetrator uses force or coercion and is aided and abetted, or the perpetrator is armed). Previously, the specified age range was thirteen to eighteen. This corrects a gap in the current statute. As currently written, the crime only applies to criminal sexual contact of the unclothed intimate parts of a minor perpetrated on a child under thirteen years of age, or perpetrated on a child thirteen to eighteen years under the listed circumstances. If the child is

under thirteen, those listed circumstances would not raise the crime to the highest degree. HB307 changes that, making all CSCM committed when the perpetrator is in a position of authority and uses that authority to coerce, uses force or coercion that results in personal injury, uses force or coercion and is aided or abetted, or is armed with a deadly weapon a first degree felony, regardless of whether the child is under 13, or between 13 and 18.

PERFORMANCE IMPLICATIONS

As currently written, first degree CSP includes all CSP on a child under thirteen (except for aggravated CSP, which carries an even greater penalty), and all CSP committed by the use of force or coercion that results in great bodily harm or great mental anguish to the victim, regardless of the victim's age. HB307 offers greater protection to children 13 to 18 by including, for them,

- all CSP committed by the use of force or coercion, regardless of whether the force or coercion resulted in great bodily harm or great mental anguish to the victim;
- all CSP committed when the perpetrator is in a position of authority over the child; and
- all CSP committed when the perpetrator is armed with a deadly weapon.

These changes make it easier for a prosecutor to prove first degree CSP when the victim is 13-18. The prosecutor will only have to prove the use of force or coercion, and not that the force or coercion resulted in great bodily harm or great mental anguish to the victim. Similarly, although CSP on a child 13-18 committed by a person in authority over the child, or committed when the perpetrator is armed with a deadly weapon, would likely be seen as CSP committed by the use of force or coercion, under the existing statute, the prosecutor would still have to prove that the force or coercion resulted in great bodily harm or great mental anguish. Under HB307, when the victim is 13-18, the prosecutor does not need to prove resulting harm if the perpetrator is in a position of authority or armed with a deadly weapon.

HB307 makes changes to related statutes to bring them into consistency with the new descriptions of CSP and CSCM.

ADMINISTRATIVE IMPLICATIONS

See "Significant Issues" and "Performance Implications," above.

Jury instructions will need to be changed to reflect the changes in the statutes.

County sheriffs will have a larger geographic area to cover when providing notice of a sex offender's residence and registration information.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Criminal sexual penetration of a minor and criminal sexual contact of a minor will be prosecuted and punished under existing statutes.

AMENDMENTS

None proposed.