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FISCAL IMPACT REPORT

ORIGINAL DATE 1/22/16

SPONSOR Clahchischilliage **LAST UPDATED** _____ **HB** 121

SHORT TITLE Criminal Sexual Offense Definitions **SB** _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but possible increased costs	Indeterminate but possible increased costs		Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General’s Office (AGO)

Children, Youth and Families Department (CYFD)

SUMMARY

HB 121 proposes an amendment to sections 30-9-10, 30-9-11 and 30-9-13. This legislation would add a new section to NMSA 1978, section 30-9-10 which would expand the definition of force or coercion to include any “criminal sexual penetration or criminal sexual contact on a child, with or without the child's consent, by a person in a position of authority”. HB 121 also removes subsection G(2) from NMSA 1978, section 30-9-11 which made criminal sexual penetration of “a child thirteen to eighteen years of age” a fourth degree felony if the perpetrator is a school employee and “is at least eighteen years of age and is at least four years older than the child”. This bill also makes changes to NMSA 1978, section 30-9-13 which defines criminal sexual contact of a minor. Some of the changes HB 121 makes to section 30-9-13 are removing references of the perpetrator “being in a position of authority” and using “force or coercion” that “results in a personal injury to a child”. Another significant change to section 30-9-13, subsection D, changes criminal sexual contact of a minor in the fourth degree to include any contact “perpetrated on a child thirteen to sixteen years of age when the perpetrator is eighteen years of age or older and at least four years older than the child and not the spouse of the child”.

FISCAL IMPLICATIONS

AOC reports there will be 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 and commenced prosecutions. 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.

SIGNIFICANT ISSUES

The AGO states the effect of this Bill would be to make criminal sexual penetration on a child thirteen to eighteen years of age a second degree felony when the perpetrator is “in a position of authority” under §30-9-11(E) and exerts undue influence over the child.

However, the AGO believes under the proposed bill, if the position in question was, for example something like a “school volunteer,” the State will have to prove that due to the perpetrator being in the position of school volunteer they were able to exert undue influence over the child. The AGO states it would not be a crime merely because of the position of the volunteer at the school. A consent defense would be available to the defendant. “Undue influence” is not defined in §30-9-10.

Additionally, the AGO also reports because the only time that the word school is used in the existing statute is in §30-9-11(G)(2) (which is being eliminated under this Bill), that definition could be eliminated from the existing statute as unnecessary.

This bill also eliminates the requirement of personal injury occurring to a child when force or coercion is used when perpetrating the crime of criminal sexual contact of a child. CYFD believes the removal of the language that injury must occur during force or coercion benefits the safety and well-being of children, especially given that often children do not promptly report criminal sexual penetration or criminal sexual contact. The likelihood of immediate reporting diminishes when the perpetrator is in a position of authority, which results in any evidence of injury typically being healed by the time of disclosure.

KK/al/jle