

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: 2/10/2025

Check all that apply:

Bill Number: HB322

Original Correction
Amendment Substitute

Sponsor: Rep. Stefani Lord, Rep. John Block, Rep. Harlan Vincent

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: INCREASE PENALTIES FOR CERTAIN CRIMES

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 74, HB 86, and HB 87.
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: the Act is self-summarized as “providing that aggravated criminal sexual penetration and criminal sexual penetration of a child shall be punished by death; providing exceptions; creating a first degree felony for human sexual trafficking against a victim under eighteen years of age punishable by death; establishing a fine for first degree felony criminal sexual penetration of a child.”

It proposes to amend NMSA 1978 Sections 30-9-11 (Criminal Sexual Penetration (CSP)), 30-52-1 (Human Trafficking), and 31-18-15 (Sentencing).

SECTION 1:

(D) changes the definition of first degree CSP from requiring perpetration on a child under 13 years old, to be inclusive of, presumably, a person of any age.

(E) (added): 1st degree CSP of a child is perpetration of CSP of a person under age 18.

(F) (added): CSP against a person 13-16, when the perpetrator is 18+ years old and at least 4 years older than the child, is a 4th degree felony.

(G) (added): CSP against a child by any type of school employee (including volunteers) who is 18+ and at least 4 years older than the child, is guilty of a 1st degree felony for child CSP.

(H) removes 2nd degree CSP as perpetrated against children (it is 1st degree by amendment above, see E).

(H) (now (5)) removes a reference to 2nd degree CSP as perpetrated against children.

(I) (prev. F) makes “all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section” a 3rd degree felony. Subsequent subsections remove the possibility of all 4th degree felonies relative to CSP.

SECTION 2:

(D) (added): makes human trafficking of a victim under the age of eighteen where the conduct is *commercial* sexual activity a 1st degree felony.

SECTION 3:

The heading, stating “Sentencing Authority,” adds “Capital Felonies.”

(A) Changes sentence for first degree felony for aggravated criminal sexual penetration from “life imprisonment” to “death.”

And adds: “first degree felony for criminal sexual penetration of a child,” with the penalty of “death”

And adds: “first degree felony for human sexual trafficking against a victim under eighteen years of age,” with the penalty of “death.”

(E) (2) changes the penalty for “a first degree felony for aggravated criminal sexual penetration” from \$17,500 to \$100,000.

(4) (added): “for a first degree felony for criminal sexual penetration of a child” and a penalty of \$100,000

FISCAL IMPLICATIONS

None noted.

SIGNIFICANT ISSUES

1. Capital punishment was abolished in NM in 2009, and all statutes related to the death penalty, NMSA 1978 Chapter 31, Article 14, were thereby repealed. *See* Laws 2009 - First Session, Forty-Ninth Legislature > Chapter 11 Section 5 Laws 2009.
2. The US Supreme Court has held that the death penalty is an unconstitutional punishment for any crime other than murder. “[R]esort to capital punishment [must] be restrained, limited in its instances of application, and reserved for the worst of crimes, those that, in the case of crimes against individuals, take the victim's life.” *Kennedy v. Louisiana*, 554 U.S. 407, (2008). And specific to rape, “[t]he Eighth Amendment bars...imposing the death penalty for the *rape of a child* where the crime did not result, and was not intended to result, in the victim's death.” *Id.* (emphasis added). *See also Coker v. Georgia*, 433 U.S. 584, 586 (1977) (“the punishment of death *for rape* violates the Eighth Amendment, which proscribes ‘cruel and unusual punishments’ and which must be observed by the States as well as the Federal Government.”) (Emphasis added.).
3. There is incongruity between the \$100,000 fines proposed for aggravated criminal sexual penetration and first degree felony for criminal sexual penetration of a child, and the provisions in NMSA 1978 Section 31-18-15 (E); for example (E)(1): “for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500).”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP: Relates to: SB 74, HB 86, and HB 87.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL: status quo.

Status quo.

AMENDMENTS