

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Cheney DATE TYPED 2/22/05 HB 505

SHORT TITLE Revise Criminal Sexual Contact of a Minor SB _____

ANALYST Medina

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General
 Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Corrections Department
 Commission on Higher Education (CHE)
 Public Education Department (PED)

SUMMARY

Synopsis of Bill

House Bill 505 revises the elements of the offense of criminal sexual contact of a minor. The bill eliminates criminal sexual contact of a minor as a felony in the third and fourth degrees, making all criminal sexual contact of a minor a second degree felony. The bill carries a possible penalty of nine years of incarceration with three years being mandatory, which may not be suspended or deferred. The bill amends sections of statute defining the types of criminal sexual contact of a minor and the related Sex Offender Registration and Notification Act.

Significant Issues

The bill creates the new category of criminal sexual contact of a minor in the second degree and defines the offense into three categories.

- The first category is all criminal sexual contact of a minor perpetrated on a child less than

thirteen years of age.

- The second category is all criminal sexual contact of a child aged thirteen to eighteen when the perpetrator uses force or coercion.
- The third category is all criminal sexual contact of a minor perpetrated on a child aged thirteen to eighteen when the perpetrator, who is licensed or unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, learns while performing services in or for a school that the child is a student in a school. In this category, the perpetrator must be at least eighteen years of age and at least four years older than the child and not the spouse of that child.

ADMINISTRATIVE IMPLICATIONS

According to the Corrections Department, this bill could result in a minor increase in costs to the Corrections Department for offenders serving longer sentences in correctional facilities. Since sentences would be longer, it is likely that such offenders would be on long probation/parole periods that would be an increased burden on probation and parole officers. It would also very slightly increase revenues from persons on probation paying monthly costs for probation.

According to the Attorney General's Office a significant portion of criminal sexual contact cases are currently resolved without the imposition of significant incarceration. The mandatory sentence provision will increase the number of sex offenders incarcerated. Mandatory incarceration will also reduce the number of sex offenders voluntarily enrolling in sex offender therapy as an alternative to incarceration. The studies of the effectiveness of therapeutic intervention come to differing conclusions depending on many factors. Among these factors are the age of the offender, the relationship with the victim, the number of offenses, and the circumstances of the offense.

TECHNICAL ISSUES

The Commission on Higher Education suggests that vendors be added to the list of perpetrators, arguing that schools are probably the responsibility of vendors while they are on school grounds.

OTHER SUBSTANTIVE ISSUES

According to the Public Education Department:

“Philosophically this bill treats the offense of CSCOM as an offense where punishment by much longer imprisonment is favored over shorter imprisonment with treatment. Some might argue that longer incarceration actually makes the public less safe because individuals who have served such lengthy sentences are not rehabilitated upon release from incarceration. Elimination of the “position of authority” variation of the offense could mean that a stepparent, who commits this offense upon a child 13 – 18 *without the use of force*, might not be subject to prosecution.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The offenses of criminal sexual contact of a minor in the third and fourth degrees would continue to exist with the punishment prescribed by current law.