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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/12

SPONSOR King LAST UPDATED \_\_\_\_\_ HB 295

SHORT TITLE Sex Offense Case Harmful Material Notices SB \_\_\_\_\_

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		NFI	NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB236 and HB128

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (AGO)  
Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 295 proposes to amend Section 29-11A-3 NMSA 1978, Sex Offender Notification Act, to exclude the intent to commit incest, electronic solicitation of a child and solicitation to commit criminal sexual contact of a minor from the provision of Section 30-28-1 NMSA 1978, which classifies intent as a felony of varying degrees. The bill also proposes to exclude child solicitation by electronic communication from the notice provisions of Section 30-37-4 NMSA 1978 part of the Sexually Oriented Materials Harmful to Minors statute.

### SIGNIFICANT ISSUES

According to the Attorney General’s Office (AGO), this correction clarifies and corrects that no crime exists for “attempt to commit child solicitation by electronic communication device” or “attempt to commit criminal sexual contact of a minor.” Only those crimes listed in Section 29-11A-3(E)(1) through (10) are included both as the substantive offense and as an attempt crime. Additionally, the deletion of the notice provisions Section 30-37-4 NMSA 1978 may have conflicted with the ability to prosecute this crime. A prosecution of a criminal sexual communication with a child may be compromised by the notice requirement of Section 30-37-4. The explicit directive in HB 295 avoids any conflicting or contrary interpretation between the two statutes.

The Public Defender Department (PDD) reports that regarding Section 30-37-3.2, Child Solicitation by Electronic Communication Device, prohibits “soliciting a child under sixteen years of age...to engage in ... a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.” Notice of specific prohibited conduct is currently required; the proposed bill would leave ambiguity regarding what constitutes an “obscene performance” or what particular conduct is considered “harmful.”

Similarly, Section 30-37-3.3, Criminal sexual communication with a child, prohibits “knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person’s intimate parts by means of an electronic communication device.” The statute requires that the images be “obscene,” but the notice requirement presumably requires further information be provided to the public to differentiate between criminal and non-criminal conduct.

Due process requires that laws give individuals of ordinary intelligence fair warning of what conduct is prohibited. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

## **RELATIONSHIP**

Relates to HB236 and HB128.

ABS/svb