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FISCAL IMPACT REPORT

SPONSOR Candelaria **ORIGINAL DATE** 1/26/2015
LAST UPDATED _____ **HB** _____

SHORT TITLE Criminal Sentencing Act Technical Corrections **SB** 83

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Impact	See Fiscal Impact	See Fiscal Impact	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorney (AODA)

Attorney General’s Office (AOG)

SUMMARY

Synopsis of Bill

Senate Bill 83 amends Section 31-18-25 NMSA 1978 by making minor technical changes to Subsections D and F. Subsection D is amended to read “the defendant” rather than “he”.

Subsection F (1) is amended to refer to Subsection D of Section 30-9-11 NMSA 1978 rather than C, which is the correct and current location of criminal sexual penetration in the first degree.

Subsection F (2) is amended to refer to Subsection E of Section 30-9-11 NMSA 1978 rather than D, which is the correct and current location of criminal sexual penetration in the second degree.

FISCAL IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

SIGNIFICANT ISSUES

AGO provided the following analysis:

The 2007 legislative reorganization of Section 30-90-11 NMSA 1978 moved the definition of criminal sexual penetration in the second degree to Subsection E and the definition of criminal sexual penetration in the first degree to Subsection D. The reorganization did not make a corresponding change in Section 31-18-25 (F) to substitute Subsection E of Section 30-90-11 for Subsection D and to substitute Subsection D of Section 30-90-11 for C.

The reorganization became a source of confusion in State of New Mexico ex rel. Brandenburg v. Sanchez, 34,453 (N.M. 2014). The defendant was convicted of criminal sexual penetration (CSP) in the second degree and the State sought to impose a mandatory life sentence, pursuant to Section 31-18-25 NMSA 1978, because it was the defendant's second violent sexual offense. The District Court concluded that the mandatory life sentence enhancement did not apply, finding a "legislative infirmity" in the statutes. The State appealed and the NM Supreme Court granted the emergency petition for writ of superintending control.

In Justice Bosson's Opinion he stated, "While Section 31-18-25 (F) is not as clear as it could be because the reader has to reconcile the discrepancy in the reference to Subsections C and D of Section 30-90-11, there is no indication that the Legislature intended to repeal the mandatory life sentence for a second conviction of second degree CSP." He went on to say, "We do, however, invite the Legislature to address this statutory anomaly to clarify what is essentially a clerical error."

EC/bb