

**LFC Requester:**

**AGENCY BILL ANALYSIS  
2025 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

**AgencyAnalysis.nmlegis.gov**

*{Analysis must be uploaded as a PDF}*

**SECTION I: GENERAL INFORMATION**

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

*Check all that apply:*

**Original**     **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 1/22/2025  
**Bill No:** HB 87-280

**Sponsor:** Rep. Hochman-Vigil  
**Short Title:** Non-Consensual Touching Clarification

**Agency Name and Code Number:** Law Offices of Public Defender-280  
**Person Writing:** Caitlin Smith  
**Phone:** 505-395-2890    **Email:** caitlin.smith@lopdm.us

**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 Expenditure Decreases)

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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: N/A  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: HB 87 would remove “unclothed” from the definition of criminal sexual contact against an adult in NMSA 1978, Section 30-9-12 (1993). Under current law, unlawful sexual touching of an adult’s unclothed “intimate parts” by the use of force or coercion is a misdemeanor; penalties increase to a fourth-degree felony (carrying up to 18 months in prison) if the victim is injured, if multiple perpetrators are involved, or the perpetrator is armed with a deadly weapon. This bill would extend those penalties, as well as sex offender registration, to over-the-clothes touching as well.

It is worth noting that this bill would *not* affect crimes against children. Criminal sexual contact of a minor, whether clothed or unclothed, is a separate criminal offense under NMSA 1978, Section 30-9-13 (2003).

**FISCAL IMPLICATIONS**

A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf)

The fiscal impact of HB 87 on the LOPD depends on the number of prosecutions brought under the section. Any increase in the number of prosecutions would require additional funding for indigent defense services in order to protect the Sixth Amendment rights of defendants.

This bill would have the effect of expanding the Sex Offender Registration and Notification Act (SORNA)—some offenses that the law does not currently treat as registrable sex offenses would, under HB 87, require sex offender registration. This could also lead to an increase in LOPD caseloads for two reasons.

SORNA registration is a serious collateral consequence of conviction that can lead to more rigorous plea negotiation, but if unable to plea bargain out of registration, more defendants will prefer to risk a trial than take a plea carrying that greater penalty. Additionally, people who

fail to comply with their responsibility to register under SORNA are liable for felony “failure to register as a sex offender,” so having more registrants can directly translate to having more criminal cases for failure to register.

SORNA registration is a dramatic proposed change in penalty. If more trials result, LOPD is likely to need to hire more trial attorneys. These felonies would be handled by mid-level felony capable attorneys (Associate Trial Attorneys). Depending on the volume of cases in the geographic location there may be a significant recurring increase in needed FTEs for the office and contract counsel compensation. Associate Trial Attorney’s mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to necessary salary differential to maintain qualified employees). Recurring statewide operational costs per attorney would be \$12,909.00 with start-up costs of \$5,210.00; additionally, average support staff (secretarial, investigator and social worker) costs per attorney would total \$123,962.51. Accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed higher-penalty scheme.

## **SIGNIFICANT ISSUES**

First, where the bill may be intended to close a perceived gap in the law, HB 87 would re-classify conduct that is *already criminal* under non-sexual statutes as criminal sexual contact. Those existing, applicable crimes also carry comparable penalties, so there is no benefit from enacting this legislation in terms of punishing the conduct more harshly in terms of incarceration.

On the other hand, reclassifying already criminal conduct as a *sex offense* would have the [possibly unintended] effect of making more conduct subject to SORNA registration that may not be of a nature typically triggering that collateral consequence.

Additionally, HB 87 would eliminate any distinction in the law between clothed and unclothed touching of an adult, a distinction that results in differing penalties when committed against children under Section 30-9-13. Notably, “intimate parts” for sexual contact purposes include genitalia, but also include any part of the breast, buttock, and mons pubis. Under current law, touching an adult in these areas over clothing is punishable as an “offensive” form of battery, while unclothed contact is treated as a sex offense, which should be maintained because the degree of bodily intrusion is notably different.

### *Criminal penalties and sex offender registration*

HB 87 would expand the crime of criminal sexual contact to include over-the-clothes touching of an adult’s “intimate parts,” which are defined by statute as the genital area, groin, buttocks, anus, or breast. This conduct is already criminal: touching a person in a “rude, insolent or angry manner” is battery under NMSA 1978, Section 30-3-4 (1963). Simple battery is a petty misdemeanor, but battery increases to a full misdemeanor if it is domestic violence, *see* NMSA 1978, § 30-3-15 (2008), or if it is committed with intent to injure and causes temporary injury, *see* NMSA 1978, § 30-3-5(A)-(B) (1969).

HB 87 would similarly punish this conduct as a misdemeanor sex offense if it were perpetrated with the use of “force or coercion.” Criminal sexual contact also requires an “unlawful” purpose, which can include the intent to arouse or gratify sexual desire *or* to intrude

upon the victim's bodily integrity or personal safety. *See* UJI 14-132 NMRA. In other words, it need not be sexually motivated at all. By incorporating this battery conduct into the sexual contact statute, if HB 87 is adopted, there is a high likelihood of increased litigation over the applicable intent or purpose in every case, and a risk of "sexualizing" non-sexual batteries.

Subsection C of the bill would punish over-the-clothes touching more severely, as a fourth-degree felony, if the perpetrator used force or coercion that injured the victim, if the perpetrator acted in concert with others, or if the perpetrator were armed with a deadly weapon. Again, many of these situations are already punishable as felonies. If a person is threatened by a deadly weapon, that constitutes aggravated assault with a deadly weapon, which is punishable as a fourth-degree felony, carrying a penalty of up to 18 months in prison. *See* § 30-3-2. If a gun is involved, additional sentence enhancements apply. *See* NMSA 1978, § 31-18-16 (2022) (three-year sentence enhancement if a firearm is brandished; five-year enhancement if it is discharged).

Additionally, if a defendant sexually touched a victim over the victim's clothes while trying to rape the victim, the defendant could be charged with attempted criminal sexual penetration. *See* NMSA 1978, § 30-28-1 (2024). An attempted sex crime is a registrable offense under NMSA 1978, Section 29-11A-3(I)(13) (2013), and it would trigger sex offender registration and associated consequences, including the possibility of additional penalties for failure to comply. *See* NMSA 1978, § 29-11A-4(P)-(Q) (2013).

In summary, the conduct that HB 87 would reclassify conduct is already illegal and can already be prosecuted. HB 87 might increase penalties in some circumstances, but in other situations, more serious penalties are already available.

The biggest impact the bill would have would be to make more clothed contact registrable under SORNA. Fourth-degree criminal sexual contact is a registrable sex offense, *see* § 29-11A-3(I)(2). By expanding the definition of criminal sexual contact to include clothed touching, HB 87 would reclassify some conduct that is currently battery (not a sex offense) as felony criminal sexual contact (a sex offense) and make it registrable. The conduct affected by this change would be clothed sexual contact committed under the circumstances described in subsection C of the bill (injury to the victim, acting in concert with others, or being armed with a deadly weapon).

#### *Eliminating distinction between clothed and unclothed conduct*

New Mexico law has generally punished unclothed criminal sexual contact more severely than clothed criminal sexual contact. Currently, as described above, unclothed criminal sexual contact with an adult is a misdemeanor or fourth-degree felony, depending on the circumstances; clothed criminal sexual contact is punishable as battery. Similarly, unclothed criminal sexual contact with a child is generally a second-degree felony for a sexual offense against a child; clothed contact with a child is generally a third-degree felony for a sexual offense against a child. Section 30-9-13(B), (C).

HB 87 would eliminate this distinction for criminal sexual contact of adults, imposing the same penalties for touching a person's clothed buttocks as for touching the person's unclothed genitals.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

HB 87 would break off the last sentence of Section 30-9-12(C) (“Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.”) and turn it into its own subsection. This would have no substantive effect, and it is not necessary; for clarity, it would make sense to keep this sentence in subsection (C) with the definition of fourth-degree criminal sexual contact.

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

To maintain the distinction between clothed and unclothed contact, the legislature could impose lesser penalties for clothed contact. For example, if unclothed contact would be a fourth-degree felony under 30-9-12(C), the legislature could make equivalent clothed contact a misdemeanor. If unclothed contact would be a misdemeanor under 30-9-12(D), the legislature could make equivalent clothed contact a petty misdemeanor.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**