

**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** 2/11/2025  
**Bill No:** HB 322-280

**Sponsor:** Stefani Lord, John Block, and Harlan Vincent  
**Short Title:** Increase Penalties for Certain Crimes

**Agency Name and Code** LOPD-280  
**Number:** \_\_\_\_\_  
**Person Writing** Bianca Ybarra  
**Phone:** (505) 392-2890 **Email** bianca.ybarra@lopdnm.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: None known

Duplicates/Relates to Appropriation in the General Appropriation Act: None known

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

HB 322 seeks to enhance penalties within NMSA 1978, § 30-9-11, “Criminal Sexual Penetration,” and NMSA 1978, § 30-52-1, “Human Trafficking.”

This bill would amend the basic sentences and create new “special” basic sentences within NMSA 1978, § 31-18-15, “Sentencing Authority.”

With these changes, HB 322 would impose the death penalty for aggravated criminal sexual penetration (“CSP”) (currently life in prison), and first degree CSP of a child (currently 18 mandatory years in prison), and human trafficking for commercial sexual activity of a child (currently nine or eighteen years depending on age), and would increase the associated monetary fines for those crimes.

**FISCAL IMPLICATIONS**

Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. If more, higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to address these additional trials and ensure compliance with constitutional mandates of effective assistance of counsel. Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs. Assessment would be necessary after the implementation of the proposed higher-penalty scheme.

Defense of such cases and hearings would be handled by mid-level felony capable LOPD criminal defense 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. An 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. Again, assessment of the impact would be necessary after the implementation of the proposed legislation, but such is likely to result in a requirement for additional funds to LOPD in order to provide constitutionally required effective assistance of counsel.

The proposed legislation could also have a fiscal impact on DOC, of course. Presumably, the courts, DAs and AGs would be affected in similar measure to LOPD.

## **SIGNIFICANT ISSUES**

Critically, imposing the death penalty for a non-homicide crime, even an egregious one, is forbidden by the Eighth Amendment to the United States Constitution. *Coker v. Georgia*, 433 U.S. 584 (1977). This bill is facially unconstitutional.

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. While some of these crimes have a basic sentence of life imprisonment, the change requested by this bill would increase a current second degree felony punishable by three years' imprisonment to a first degree felony that would be punishable by death. Therefore, this change would, at most, lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

### *Changes to Criminal Sexual Penetration (§ 30-9-11):*

HB 322 would change the penalty for aggravated CSP (“perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life”) from a life sentence to the death penalty.

“CSP” is defined as unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse” or penetration “to any extent and with any object.” This bill maintains that basic definition. CSP may involve violent acts of intercourse with injury, and may also include a single insertion of a single finger just past the labia and for less than one second. Because of the huge variation in culpability and harm this definition involves, Section 30-9-11 currently includes third, second, and first-degree felonies for CSP against minors, with penalties as low as three years and as high as 18 mandatory years (or life, for aggravated CSP). Current law tiers those penalties based on whether force or violence was used, the age of the victim, and the involvement of aggravating circumstances like a deadly weapon, multiple perpetrators, or physical injury or mental anguish.

This bill would remove all other gradations for child victims and otherwise treat all CSP of a person under age 18 as a special “first degree felony for criminal sexual penetration of a child,” and Section 3 of the bill would set that penalty at “death.”

That said, Subsection F of Section 1 of the bill designates a fourth-degree felony (carrying 18 months in prison) for CSP of children 13-16 years old when the perpetrator is at least four years older. This subsection *appears to* maintain a fourth-degree felony for “statutory rape” when no force or coercion is involved, but the age difference alone renders the sexual encounter illegal. However, Subsection F is internally inconsistent with the unqualified language in Subsection E, which states that “*all criminal sexual penetration perpetrated on a child under eighteen years of age*” is a first degree felony carrying the death penalty. If (F) is intended as an exception, this intent is not clear.

### *Changes to Human Trafficking (§ 30-52-1):*

Currently, § 30-52-1(C) addresses “whoever commits human trafficking is guilty of a third

degree felony; except if the victim is under the age of: (1) sixteen, the person is guilty of a second degree felony; or (2) thirteen, the person is guilty of a first degree felony.” The current statute does not differentiate between human trafficking for labor, services, or commercial sexual activity; but it does enhance the degree of felony based on the age of the victim.

Section 2 of HB 322 would specify if human trafficking was *for commercial sexual activity* and the victim is under eighteen, it be a special “first degree felony for human sexual trafficking against a victim under the age of eighteen.” Section 3 of the bill would then amend Section 31-18-15 to create a new “first degree felony for human sexual trafficking against a victim under the age of eighteen” with a basic sentence of death.

#### *Death as Punishment:*

As noted, imposing the death penalty for a non-homicide crime is unconstitutional.

Furthermore, New Mexico abolished the death penalty as a sentencing option even for murder in 2009. *Fry v. Lopez*, 2019-NMSC-013, ¶ 2. This bill fails to restore the death penalty or any of the statutory scheme governing such a penalty, all of which was repealed nearly 20 years ago.

Currently, § 31-18-14 (sentencing authority – capital felonies), only provides for life without parole as the highest penalty available for capital felonies and the sentence is determined by whether or not the jury finds one or more aggravating circumstances exist. *See* § 31-20A-2 and § 31-20A-5 (listing the aggravating circumstances). Notably, none of the current aggravating circumstances listed address CSP of a child or human trafficking for commercial sexual activity of a child, and therefore, would not even qualify for life without parole.

In addition to being unconstitutional, the intended death penalty cannot be effectuated without amending Section 31-18-14.

### **PERFORMANCE IMPLICATIONS**

*See Fiscal Implications and Significant Issues.*

### **ADMINISTRATIVE IMPLICATIONS**

*See Fiscal Implications.*

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

*See Significant Issues.*

### **TECHNICAL ISSUES**

*See Significant Issues.*

### **OTHER SUBSTANTIVE ISSUES**

It is well-established that incarceration in general is not a deterrent to committing a crime, and even the death penalty has not been proven to deter criminal activity. *See Five Things About Deterrence*, NAT’L INST. OF JUSTICE (May 2016) [HTTPS://WWW.OJP.GOV/PDFFILES1/NIJ/247350.PDF](https://www.ojp.gov/pdffiles1/nij/247350.pdf). In fact, time behind bars can increase the likelihood that someone will commit

another crime in the future. *See* Jamie Santa Cruz, *Rethinking Prison as a Deterrent to Future Crime*, JSTOR Daily (July 18, 2022) <https://daily.jstor.org/rethinking-prison-as-a-deterrent-to-future-crime/#:~:text=In%202021%2C%20a%20much%20larger,that%20didn't%20involve%20imprisonment.>

## **ALTERNATIVES**

None noted.

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

Status quo. These offenses would continue to be crimes punishable under existing law, with options to charge associated crimes like kidnapping, child abuse, contributing to the delinquency of a minor, and subject to sentencing increases for aggravating circumstances under NMSA 1978, Section 31-18-15.1.

## **AMENDMENTS**

None at this time