

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 322 amends Section 30-9-11 NMSA 1978, regarding criminal sexual penetration, to create the offense of criminal sexual penetration of a child in the first degree, which it defines as all criminal sexual penetration on a child under eighteen. The bill makes criminal sexual penetration of a child in the first degree its own first degree felony, and amends Section 31-18-15 NMSA 1978 to provide that the penalty for that felony shall be death.

HB 322 also provides a lesser offense for criminal sexual penetration of a child when the child is thirteen to sixteen years of age and the perpetrator is at least 18 years old and at least four years older than the child and not the child's spouse. That offense would be a fourth degree felony.

The bill further amends Section 30-9-11 to provide that criminal sexual penetration of a child when the perpetrator is in certain positions of authority and is at least 18 years old and at least four years older than the child and not the child's spouse shall be a first degree felony for criminal sexual penetration of a child (punishable by death).

HB 322 makes conforming changes throughout the bill, including removing the definition and prescribed penalties for criminal sexual penetration in the fourth degree.

The bill also amends Section 30-52-1 NMSA 1978, regarding human trafficking, to create the offense of first degree human sexual trafficking against a victim under the age of eighteen, which it defines as human trafficking of victims under the age of 18 for the purpose of commercial sexual activity. The bill also amends Section 31-18-15 to provide that the penalty for a first degree felony for human sexual trafficking against a victim under eighteen years of age shall be death.

HB 322 further amends Section 31-18-15 to increase the fine for first degree aggravated criminal sexual penetration, from \$17,500 to \$100,000 and to add a fine of \$100,000 for first degree criminal sexual penetration of a child.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

HB 322 defines criminal sexual penetration of a child in the first degree as criminal sexual penetration of a child under 18, and provides a lesser offense when the child is 13 to 16, the perpetrator is over 18 and at least four years older than the child and not the child's spouse. It is

unclear if the bill intentionally omitted 17-year-olds from that lesser offense. It is also unclear where the distinction is between criminal sexual penetration of a child in the first degree and the lesser offense of criminal sexual penetration of a child, as the offense in the first degree seems to subsume the lesser offense. The offense in the first degree has fewer requirements, but a much harsher sentence (death/life imprisonment vs. a fourth degree felony).

Though HB 322 prescribes that the penalty for the first degree felonies for criminal sexual penetration of a child and human sexual trafficking against a victim under eighteen years of age shall be death, the death penalty was abolished in New Mexico in 2009. Even if the death penalty was reinstated in the state, instituting the death penalty for these offenses would still be unconstitutional under the Eighth Amendment of the U.S. Constitution, which the U.S. Supreme Court has interpreted to prohibit the death penalty for offenses that do not involve the death of the victim. *See Kennedy v. Louisiana*, 554 U.S. 407 (2008), available here: <https://supreme.justia.com/cases/federal/us/554/07-343/index.pdf> (expressly overruling the application of the death penalty for a case involving the rape of a child and reiterating the Court's position regarding the use of the death penalty: "As it relates to crimes against individuals, though, the death penalty should not be expanded to instances where the victim's life was not taken.").

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS