

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Garcia, M.J. **ORIGINAL DATE** 01/19/12
LAST UPDATED 01/26/12 **HB** _____

SHORT TITLE Criminal Sexual Penetration of Child Under 5 **SB** 58

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$6,237.6	\$6237.6	\$12,475.2	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Adult Parole Board (APB)

Administrative Office of the District Attorneys (AODA)

New Mexico Corrections Department (NMCD)

Crime Victims Reparation Commission (CVRC)

Public Defender Department (PDD)

SUMMARY

Synopsis of Bill

Senate Bill 58 amends Section 30-9-11 NMSA 1978, Criminal Sexual Penetration, by making it a first degree felony for sexual penetration of a child under the five years of age.

FISCAL IMPLICATIONS

The Corrections Department reports it will have a fiscal impact if the bill is enacted into law, but it is unable to accurately project the dollar amount except to say it will be about \$200 thousand over a three year period.

The Adult Parole Board reports minimal fiscal impact in the early years and may see an upswing after offenders have served 30 years.

According to the Administrative Office of the District Attorneys, changes to the law will not require more prosecutors since the younger the child the more difficult it is to prove a case since many of the children are not considered legally competent.

According to the Public Defender Department (PDD), passage and enactment of HB 128, which is a duplicate of SB58 would carry with it significant fiscal impact for the Public Defender Department, DAs, AG, and courts. Based on the PDD case management system, it opened 120 cases of criminal sexual penetration under the age of 13 in FY11. The department would be required to provide defense counsel services to 120 cases versus 16 under the existing law. The change would require ten senior trial attorneys, an administrator, three support staff, an investigator, expert witnesses, office space and equipment totaling \$2,712 thousand.

Based on the cases filed at the PDD for representation, the potential increase to the inmate population at the NMCD is 104 additional inmates assuming all are convicted and sent to prison. The increase in inmates translates into \$3,525.4 thousand additional costs to the NMCD.

The total fiscal impact to the state just for two of the agencies is \$6.2 million assuming no increases in salaries and benefits for the PDD or care and support of inmates.

SIGNIFICANT ISSUES

According to the NMCD, if this and other bills are enacted into law the department will reach its rated capacity for its prison population and one of three options will have to be sought: 1) house inmates out of state, 2) release prisoners early or 3) build new or expand existing prisons.

PERFORMANCE IMPLICATIONS

Increases in the inmate population could impact inmate-on-inmate or inmate-on-staff assaults, and the community offender management performance measure of “percent of out-of-office contacts per month with offenders on high and extreme supervision on standard caseloads”.

The courts anticipate the bill will impact two of the district courts performance measures:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type.

According to the NMCD, current staffing levels and increases in the population will negatively impact the department’s ability to effectively perform prison and probation/parole supervision services.

OTHER SUBSTANTIVE ISSUES

According to the NMCD, life sentences are particularly expensive and those inmates generally require more medical care as they age in prison. Additionally, inmates serving life sentences tend to have little motivation to behave and are more apt to engage in behavior harmful to other inmates and staff.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

None. The penalty for criminal sexual penetration of a child will remain at 18 years imprisonment.