

SIGNIFICANT ISSUES

The Administrative Office of the District Attorneys reported that the amendment would make possession of prohibited images as serious as causation or manufacturing of prohibited images, and more serious than distribution. According to AODA, the basic sentence on a fourth degree felony is 18 months; the basic sentence on a second degree felony is 9 years. AODA stated the bill would allow the punishment to better fit the crime, which is currently considered one count of possession no matter how many images.

PDD stated that the proposed change to statute would “simplify matters and make for less arbitrary sentencing with regard to possession, while leaving in place the language that allows for only one count to be charged.” The department also expressed concern that the change does not allow for a gradation of offenses, meaning that if a defendant possessed only one picture, he or she would be incarcerated for nine years.

The bill does nothing to address the findings in *State v Olsson*, 2014-NMSC-012, which found that the legislature should more clearly define the how many images qualify for what sentences.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

House Bill 236 relates to House Bill 65, which amends the same section to allow each possession of an image depicting a prohibited sexual act to be charged individually.

JD/al