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FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED _____ ORIGINAL DATE <u>3/15/23</u>
SHORT TITLE <u>Establish Crime of Bestiality</u>	BILL <u>CS/Senate Bill</u> NUMBER <u>215/SJCS/aHJC</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

	FY25	FY27	FY29	5 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Up to \$26.6	Up to \$61.3	Up to \$69.9	Up to \$275.7	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From (on Original)

Administrative Office of the District Attorneys (AODA)

Department of Public Safety (DPS)

Law Offices of the Public Defender (LOPD)

New Mexico Attorney General (NMAG)

New Mexico Corrections Department (NMCD)

New Mexico Livestock Board (NMLB)

New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of HJC Amendment to SJC Substitute for Senate Bill 215

The House Judiciary Committee amendment to the Senate Judiciary Committee Substitute for Senate Bill 215 strikes what appears to be an unnecessary and perhaps confusing definition of “bestiality” in Section 2(B). The definition of the crime of bestiality remains intact in Section 3.

Synopsis of SJC Substitute for Senate Bill 215

The Senate Judiciary Committee Substitute for Senate Bill 215 enacts the Animal Sexual Abuse Act and creates the crimes of bestiality, promoting bestiality, and aggravated bestiality, punishable as fourth or third degree felonies, depending on the circumstances.

Bestiality consists of a person engaging in sexual contact with an animal. It is a fourth degree felony.

Promoting bestiality consists of a person:

- Coercing, soliciting, or manipulating a human to commit bestiality; or
- Selling or transferring, offering to sell or transfer, advertising for sale or transfer; purchasing or offering to purchase; possessing, or otherwise obtaining an animal intending to use the animal for bestiality.

Promoting bestiality is also a fourth degree felony.

Aggravated bestiality consists of a person:

- Committing or promoting bestiality in the presence of a minor; or
- Committing or promoting bestiality when a minor is a participant.

Aggravated bestiality is a third degree felony.

In addition to the felony penalty, a sentencing court must order:

- All animals under the care and control of the offender be seized and turned over to the Livestock Board (NMLB) or an animal control agency as defined in the bill; and
- The offender not own, possess, control, or reside with an animal or to engage in an occupation or profession at a place where animals are cared for or kept for a definite period of three to 15 years, beginning after the offender has completed any period of confinement.

A sentencing court may also order the offender to submit to a psychological assessment and participate in counseling. The court also may order restitution for care of an animal.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons, consequently increasing long-term costs to the general fund. Longer sentences are expected to result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities.

Because this bill creates a new category of crime—animal sexual abuse—the number of persons who may be arrested, convicted or serve time in prison is unknown at this time. Without additional information, this analysis estimates at least one additional individual will be incarcerated each year due to this bill. Based on the average time served by offenders released in FY21 whose most serious offense was for a second-, third-, and fourth degree felony, this analysis estimates SB215/cs will result in increased costs of \$69.9 thousand per offender. These additional costs will begin to be realized in FY25, increasing over the following three years (as

more individuals are incarcerated for these new crimes) and leveling out at \$69.9 thousand in FY29 (as offenders begin to be released from prison) and future fiscal years. Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under SB215, are not included in this analysis, but could be moderate.

SIGNIFICANT ISSUES

NMLB asserted in its analysis of the original bill that legislation like this one bill needs to be enacted. It reported that “the level of cruelty to animals is on the rise just like all other crime in our country. Animals should not be exempt from protection on this type of crime.”

Proponents of legislation like this one argue that the problem of animal sex abuse is complex and is growing, and there are significant, measurable links between animal sex abuse and other criminal behavior. They contend that 48 states have enacted laws prohibiting animal sex abuse and the corollary activities associated with these crimes.

LOPD noted in its analysis of the original bill that existing law prohibits cruelty to animals and extreme cruelty to animals, which are misdemeanors or fourth degree felony offenses, depending on the circumstances. See Section 30-18-1 NMSA 1978. NMSC also commented in its analysis of the original bill that some of the acts described in SB 215/cs would likely be considered extreme cruelty to animals under Subsection (E) of that section, which declares unlawful intentionally or maliciously torturing, mutilating, injuring, or poisoning an animal; or maliciously killing an animal, but that other acts that are made crimes by SB215/cs currently would not be unlawful. For instance, killing an animal without lawful justification is only a misdemeanor, while maliciously killing an animal is a fourth degree felony under existing law. LOPD pointed out in its analysis of the original bill that bestiality is a prohibited sexual act in statutes addressing the sexual exploitation of minors. See Section 30-6A-2(A) NMSA 1978. Further, LOPD reported that bestiality in the presence of a minor may be prosecuted as prohibited exhibitions of sexual conduct to a minor—currently a misdemeanor--or as aggravated indecent exposure punishable as a fourth degree felony under existing law. But under SB215/cs, the penalty for such conduct is that for a third degree felony.

AODA agreed in its analysis of the original bill that:

Right now, bestiality would have to be prosecuted as extreme animal cruelty. This bill would enact a more specific law that directly addresses the crime.

NMAG reported in its analysis of the original bill its Internet Crimes Against Children (ICAC) investigators have found evidence to suggest there have been bestiality conferences and organized gatherings hosted in New Mexico. Additionally, according to NMAG, ICAC investigators have found significant evidence of a strong correlation between pornography that contains bestiality and child pornography in cases in New Mexico.