

**LFC Requester:**

**Scott Sanchez**

**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**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**      X      **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_    **Substitute**    \_\_\_\_\_

**Date Prepared:**    01/25/24

**Bill No:**    HB 206

**Sponsor:**    Andrea Reeb, Ambrose  
Castellano, Rod Montoya

**Agency Name and  
Code Number:**    305 – New Mexico  
Department of Justice

**Short  
Title:**    PENALTIES FOR  
CERTAIN SEX  
OFFENSES

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

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

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis:

Houses Bill (HB) 206 amends existing NMSA 1978, Sections 30-6A-2; 30-6A-3; 30-37-3.3; 31-18-15; 31-20-5.2; and 31-21-10.1.

HB 206 eliminates the term “copying by any means” from the definition of “manufacture” in NMSA 1978, § 30-6A-2.

HB 206 would increase the offense level in NMSA 1978, § 30-6A-3 (A) to a third degree felony for intentional possession of more than 25 obscene images, films, photographs, and/or other visual or prints medium depicting prohibited sexual acts or simulation. If proven that a child depicted is under 13 years of age, the sentence enhancement remains at one year.

HB 206 would add to NMSA 1978, § 30-6A-3 (C) the offense of intentionally “copy[ing] by any means” any obscene visual or print medium depicting any prohibited sexual act or simulation. Upon a finding that a child depicted is under 13 years of age, the sentencing enhancement for any violation included in the subsection is increased from one to two years.

HB 206 would increase the child under 13 sentencing enhancement from one to two years for violations of NMSA 1978, § 30-6A-3 (D) [causing or permitting a child under 18 years of age to engage in any prohibited sexual act or simulation if the person knows or intends that the act may be recorded in any visual or print medium or performed publicly].

HB 206 would eliminate a defense from prosecution under NMSA 1978, § 30-37-3.3 [criminal sexual communication with a child] that the intended victim was a peace officer posing as a child under 16 years of age.

HB 206 would amend NMSA 1978, § 31-18-15 [sentencing authority] to increase the basic sentence for a third degree felony for a sexual offense against a child from six to eleven years.

HB 206 would expand the definition of “sex offender”, as used in NMSA 1978, §§ 31-20-5.2 [period of probation and terms and conditions of probation] and 31-21-10.2 [period of parole and terms and conditions of parole] to include, among other things, attempt and solicitation.

## **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 206 proposes increasing the child under 13 sentencing enhancement from one year to two years for distributing or copying obscene visual or print media depicting any prohibited sexual act or simulation, as well as for causing or permitting a child to engage in prohibited sexual act or simulation. However, HB 206 does not similarly increase the child under 13 sentencing enhancement for possession of obscene visual or print media depicting any prohibited sexual act or simulation. It is not clear on the face of HB 206 whether this disparate treatment is intentional.

Section 5(F)(11) would apply punishment retroactively, making it potentially a violation of federal and state prohibitions on ex post facto punishment. *See State v. Ordunez*, 2012-NMSC-024, ¶ 17, 283 P.3d 282 (“New Mexico courts have long recognized that a statute that increases the punishment allowable for a previously committed offense violates the ex post facto ban”).

## **PERFORMANCE IMPLICATIONS**

None.

## **ADMINISTRATIVE IMPLICATIONS**

None.

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

Related to: HB 116 Human Trafficking and Sexual Exploitation Crimes

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

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

Status quo

## **AMENDMENTS**