

LFC Requester:	Scott Sanchez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

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 **Amendment**
Correction **Substitute**

Date January 24, 2024
Bill No: HB 206

Sponsor: Reeb
Short Title: Penalties for Certain Sex Offenses

Agency Name and Code NM Sentencing Commission (354)
Number: _____
Person Writing Douglas Carver
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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
Total						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB 206 first amends Section 30-6A-2 NMSA 1978, the definitions section of the Sexual Exploitation of Children Act, to remove “copying by any means” from the definition of “manufacture”.

The bill then amends Subsection A of Section 30-6A-3 NMSA 1978, concerning the sexual exploitation of children, to increase the penalty for possession of child pornography from a fourth degree felony to a third degree felony when the person intentionally possesses more than 25 individual images or films. It further amends Subsection C of Section 30-6A-3 to add “or copy by any means” to the subsection prohibiting distribution of child pornography, and to add a two-year sentencing enhancement for the offenses of distribution or recording (Subsection D) when the child depicted is under 13.

The bill then amends Section 30-37-3.3 NMSA 1978, concerning criminal sexual communication with a child, to specify that it is not a defense that the intended victim of the defendant was a peace officer posing as a child under 16.

HB 206 also amends Section 31-18-15 NMSA 1978, concerning the basic sentences for noncapital felonies, to increase the penalty for a third degree felony for a sexual offense against a child from six years imprisonment to 11 years imprisonment.

HB 206 then amends Section 31-20-5.2 NMSA 1978, concerning probation for sex offenders, to add a conviction for or plea to the additional following crimes in the definition of “sex offender” for the purposes of that statute:

- Aggravated criminal sexual penetration;
- Criminal sexual penetration in the fourth degree;
- Criminal sexual contact of a minor in the fourth degree;
- Criminal sexual contact in the fourth degree;
- False imprisonment when committed with the intent to inflict a sexual offense;
- Aggravated indecent exposure;
- Enticement of a child;
- Incest when the victim is younger than 18;

- Child solicitation by electronic communication device for convictions occurring on or after July 1, 2013;
- Solicitation to commit criminal sexual contact of a minor in the second through fourth degrees;
- Attempt to commit any sex offense listed except solicitation to commit criminal sexual contact of a minor when the attempt is a felony.

HB 206 also amends Section 31-21-10.1 NMSA 1978, regarding parole for sex offenders, to add a conviction for or plea to the additional following crimes in the definition of “sex offender” for the purposes of that statute:

- Criminal sexual contact in the fourth degree;
- False imprisonment when committed with the intent to inflict a sexual offense;
- Aggravated indecent exposure;
- Enticement of a child;
- Incest when the victim is younger than 18;
- Solicitation to commit criminal sexual contact of a minor in the second through fourth degrees;
- Attempt to commit any sex offense listed except solicitation to commit criminal sexual contact of a minor when the attempt is a felony.

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

The New Mexico Sentencing Commission is presently undertaking a review and update to the state’s Criminal Code. As part of this process, the Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall outside of the normal penalty structure in the state. HB 206 would continue that use of special penalties in the Criminal Code, as it increases the penalty for a third degree felony for a sexual offense against a child from six years imprisonment to 11 years imprisonment. Under Section 31-18-15 NMSA 1978, the basic sentence for a third degree felony is three years imprisonment.

Another part of the Sentencing Commission’s Criminal Code update process has been the establishment of a working group to rework the statutes on criminal sexual contact, criminal sexual penetration, and sexual exploitation of children – these statutes are all implicated in HB 206. This working group is led by the Commissioner who represents victims’ advocates on the Commission, and is made up of prosecutors from the state Department of Justice and district attorney offices, as well as representatives from the Law Offices of the Public Defender. The members of the working group all have significant experience in trying cases related to sex offenses. The Commission plans to present a bill concerning these changes in the next Legislative Session when the working group has completed its revisions.

The expansion of crimes that would make one a sex offender for the purposes of additional probation or parole supervision is extensive, and includes many fourth degree felonies, which are generally considered crimes of a less extreme nature.

It is difficult to determine what the effect of passing HB 206 would be on the state's prison population, but the increased penalties included in HB 206 would likely lead to more people being incarcerated by the Corrections Department. The average per day cost to incarcerate someone in the state's prison system is \$156.45/day; this average includes private and public facilities.

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