

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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**AGENCY BILL ANALYSIS  
2024 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:**

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*{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** 2-1-2024  
**Bill No:** HB 282

**Sponsor:** Meredith A. Dixon and Marian Matthews  
**Short Title:** SEX OFFENDER REGISTRATION &

**Agency Name and Code** AOC 218  
**Number:** \_\_\_\_\_  
**Person Writing** Twila A. Hoon Witz  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
	None sought but projected cost over 3,000,000	recurring	

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
	n/a		n/a	

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>		3,159,000	3,159,000		Recurring	

(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**

There is no effective date for this bill. It is assumed that the effective date is May 15, 2024, which is 90 days following the adjournment of the Legislature and the bill does reflect in Sec 29-11A-3(J) that the applicability is for offenses committed on or after the date the offense became registerable in New Mexico.

Synopsis: HB 282 seeks to amend Sec 29-11A-2 NMSA 1978; Sec 29-11A-3 NMSA 1978; Sec 29-11A-4 NMSA 1978; Sec 29-11A-4.1 NMSA 1978; Sec 29-11A-5 NMSA 1978; Sec 29-11A-5.1 NMSA 1978; Sec 29-11A-7 NMSA 1978; :

**Section 1:**

- Sec 29-11A-2(B) adds language that asserts the purpose of the Sex Offender Registration Act (SORA) ‘is to comply with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006, and’
- Sec 29-11A-2(B) (1) amending language to the singular i.e. ‘a’ offender from offenders
- Sec 29-11A-2(B)(2) amending language to the singular or plural and modifying are to is and ‘other states’ to another state.

**Section 2:**

- Sec 29-11A-3(D) strikes and replaces institutions of higher learning with a definition of ‘habitually lives’ to mean any place where a sex offender lives for at least thirty days in any three-hundred-sixty-five-day period
- Sec 29-11A-3(E) reinserts the previously deleted definition of institution of higher education
- Sec 29-11A-3(F) renumbers to insert a new (F) as a definition of juvenile sex offender ‘means a person fourteen years of age or older who has been adjudicated delinquent for committing a sexually violent offense
- Sec 29-11A-3(G) is renumbered from (F) and adds to the definition of out-of-state registrant ‘is employed or attend school’
- Sec 29-11A-3(H) is renumbered from (G)
- Sec 29-11A-3(I) is renumbered from (H) and in subsection (1) adds language to residency ‘on or after July 1, 1995’, and adds language ‘and includes a juvenile sex offender who received an adult sentence pursuant to Section 32A-2-20 NMSA 1978’
- Sec 29-11A-3(J) is renumbered from (I) and adds language to the definition of a sex offense ‘committed on or after the date the offense became registerable in New Mexico’
- Sec 29-11A-3(J)(13) adds a new section defining sex offense to include ‘patronizing prostitutes, as provided in Subsection B of Section 30-9-3 NMSA 1978, when there is a

separate finding of fact that the sex offender known or should have known that the person believed to be a prostitute was younger than sixteen years of age'

- Sec 29-11A-3(J)(14) adds a new section defining sex offense to include 'promoting prostitution, as provided in Section 30-9-4 NMSA 1978, when there is a separate finding of fact that the sex offender knew or should have known that the victim was younger than sixteen years of age'
- Sec 29-11A-3(J)(15) adds a new section defining sex offense to include 'accepting earnings of a prostitute, as provided in Section 30-9-4.1 NMSA 1978, when there is a separate finding of fact that the sex offender knew or should have known that the person engaged in prostitution was younger than sixteen years of age'
- Sec 29-11A-3(J)(16) adds a new section defining sex offense to include 'human trafficking, as provided in Section 30-52-1 NMSA 1978, for a sexual purpose, when the victim is younger than sixteen years of age'
- Sec 29-11A-3(J)(17) adds a new section defining sex offense to include 'criminal sexual communication with a child, as provided in Section 30-37-3.3 NMSA 1978'
- Sec 29-11A-3(J)(18) renumbers (13) and expands the attempt language to read (1) through (17) to encompass the new sections
- Sec 29-11A-3(J)(19) adds a new section to the definition of sex offense to include 'conspiracy to commit any of the sex offenses set forth on Paragraphs (1) through (17) of this subsection, as provided in Section 30-28-2 NMSA 1978
- Sec 29-11A-3(K) adds a new section defining sexually violent offense to mean 'aggravated criminal sexual penetration, criminal sexual penetration in the first degree, criminal sexual penetration in the second degree, or criminal sexual penetration in the third degree'
- Sec 29-11A-3(L) renumbers (J) to (L) to adjust for the previous new sections and modifies the spelling of web site to 'website' in the definition of a social networking site
- Sec 29-11A-3(M)(1-4) adds a new section to create and define a tier 1 classification of sex offenses including new language that 'tier 1 sex offense means: (1) enticement of a child, as provided in Section 30-9-1 NMSA 1978; (2) sexual exploitation of children, as provided in Subsection A of Section 30-6A-3 NMSA 1978; (3) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978; (4) aggravated indecent exposure, as provided in Section 30-9-14.3; and subsection (5) adds language to encompass any attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978
- Sec 29-11A-3(N)(1-13) adds a new section to create and define a tier 2 classification of sex offenses including new language that 'tier 2 sex offense means: (1) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978; (2) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; (3) false imprisonment, as provided in Section 30-4-3 NMSA 1978, committed with the intent to inflict a sex offense; (4) patronizing prostitutes, as provided in Subsection B of Section 30-9-3 NMSA 1978, when there is a separate finding of fact that the sex offender knew or should have known that the person believed to be a prostitute was younger than sixteen years of age; (5) promoting prostitution, as provided in Section 30-9-4 NMSA 1978, when there is a separate finding of fact that the sex offender knew or should have known that the victim was than sixteen years of age; (6) accepting earnings of a prostitute, as provided in Section 30-9-4.1 NMSA 1978, when there is a separate finding of fact that the sex offender knew or should have known that the person engaged in prostitution was younger than sixteen years of age; (7) criminal sexual penetration in the fourth degree, as provided in Section 30-9-11 NMSA 1978, when the victim is sixteen

years of age or older; (8) criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978, when the victim is thirteen to eighteen years of age; (9) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is over sixteen but younger than eighteen years of age; (10) criminal sexual communication with a child, as provided in Section 30-37-3.3 NMSA 1978; (11) human trafficking, as provided in Section 30-52-1 NMSA 1978, for a sexual purpose, when the victim is younger than sixteen years of age; (12) child solicitation by electronic communication device, as provided in Subsection C of Section 30-37-3.2 NMSA 1978; (13) solicitation to commit criminal sexual contact of a minor, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; with section (14) adding language to encompass any attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978;

- Sec 29-11A-3(O)(1-5) adds a new section to create and define a tier 3 classification of sex offenses including new language that ‘tier 3 sex offense means: (1) kidnapping, as provided in Section 30-4-1 NMSA 1978, when committed with intent to inflict a sex offense and when the victim is younger than eighteen years of age; (2) aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in section 30-9-11 NMSA 1978; (3) criminal sexual penetration in the fourth degree as provided in Section 30-9-11 NMSA 1978, when the victim is younger than sixteen years of age; (4) criminal sexual contact of a minor as provided in Section 30-9-13 NMSA 1978, when the victim is younger than thirteen years of age; (5) incest, as provided in Section 30-10-3 NMSA 1978, when the victim is younger than sixteen years of age; with section (6) adding language to encompass any attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

### **Section 3: addresses**

- Seeks to add to Sec 29-11A-4 NMSA 1978 by adding a new subsection (B) and re-letters the original B to (C) with (B) requiring “A juvenile sex offender shall register with the children, youth and families department within three business days of release into the community after an adjudication for a sexually violent offense.
- Section (C), previously (B) is re-lettered to (C) and amended to add language that the sex offender resident has to register ‘in person’ and reduces the time from five business days to ‘three’ business days after release and reduces the time of a sex offender who changes residences to New Mexico from five to three business days after arrival in the state.
- Section (D), previously (C) is re-lettered to (D) and amended to require the sex offender to register ‘in person’ when a resident of another state but employed in New Mexico or attending public or private school or an institution of higher education and adds ‘within three business days of beginning work or attending school in New Mexico.
- Section (E), previously (D) is re-lettered and adds the language ‘in person’ to the requirement that the sex offender to register ‘in person’ when a resident of another state but employed in New Mexico or attending public or private school or an institution of higher education and adds ‘within three business days of beginning work or attending school in New Mexico.
- Section (F), previously (E) is re-lettered and adds the language ‘in person’
- Section (G), previously (F) is re-lettered and adds ‘immediately’ and removes the five business day requirement for sending written notice of any change to the information required under this section
- Section (H), previously G is re-lettered and to the requirement of registering with the county sheriff upon moving to a new county to add ‘in person’ and to change five

business days to three business days as well as to reduce the notification of the sheriff of the prior county from five business days to three business days.

- Section (I), previously H is re-lettered and the requirement of the homeless sex offender registering each address with each sheriff in each county is amended to add “in person” for each county and reduces the time from five business days to three business days
- Section (J), previously I is re-lettered and the time to notify the county sheriff, the law enforcement entity for the institution of higher education and the registrar is reduced from five business days to three business days when the sex offender begins or changes employment, a vocation or enrolls
- Section (K), previously J is re-lettered and changes the requirement from five business days to three business days for notice of employment or enrollment or a change in that status at a public or private school in New Mexico to the county sheriff and the principal of the school
- Section (L), previously K is re-lettered
- Section (M), previously L is re-lettered and section (1) amended to strike language regarding Subsection D and replaced with ‘convicted of a tier 3 sex offense; section (2) is amended to strike language regarding Subsection E and replaced with ‘convicted of a tier 2 sex offense’ and strikes county sheriff and replaces it with ‘department’ and strikes ten and amends to ‘twenty-five’ years and to add ‘from the date of initial registration’; section (3) amends to add ‘a sex offender convicted of a tier 1 sex offense shall annually verify registration information with the department as provided in Subsection O of this section prior to December 31 of each subsequent calendar year for a period of fifteen years from the date of initial registration; (4) amends to add ‘a sex offender required to register for the remainder of the sex offender’s natural life as a result of an out-of-state conviction shall verify registration information with the department as provided in Subsection O of this section not less than once in each ninety-day period for the remainder of the sex offender’s natural life; (5) formerly subsection 3 is renumbered and amended to delete county sheriff and replace with ‘department as provided in Subsection O of the section’ and strikes whichever is the longer of, the subsection identifier (a) and all of subsection (b); (6) amends to add ‘ a juvenile sex offender’s obligation to register shall extend until the offender attains twenty-one years of age or until the juvenile offender is released from supervision by the children, youth and families department; (N), formerly M is re-lettered and updates to reflect paragraph changes supra and strikes sheriff to replace with department; (O), formerly N is re-lettered and amended to add language that ‘a sex offender shall be relieved of the in-person verification requirements of this subsection if the sex offender is confined to a hospice facility or skilled nursing home; the amendment strikes the previous O and adds as section (P) which requires ‘ a sex offender shall appear in person to notify the county sheriff in the county where the sex offender resides no later than three days after a sex offender’s change of name, change of residence, change of employment or change in student status; (Q), formerly P and ®, formerly Q are re-lettered.

#### **Section 4 addresses**

- Section 29-11A-4.1 (A) and (A)(1) to strike gendered language he and replace with ‘the sex offender’

#### **Section 5 addresses**

- Section 29-11A-5 (D) to strike the title of public safety leaving department and strikes the language for any of the following sex offenses for the entirety with amended language ‘of a tier 3 sex offense for the remainder’ and strikes the enumerated criminal offenses previously listed in (D) (1) through (6)

- Section 29-11A-5(E) is amended to strike language for the following offenses and replaces it with ‘of a tier 2 sex offense; and strikes ten years and replaces it with ‘twenty-five’ and adds the language ‘the latest of’ to modify the sex offender’s conviction and strikes whichever comes first and the enumerated criminal offenses previously listed in (E) (1) through (9)
- Section 29-11A-5 is amended to add a new section F which requires the ‘department shall retain registration information regarding a sex offender convicted of a tier 1 sex offense for a period of fifteen years following the latest of a sex offender’s conviction, release from prison or release from probation or parole’
- Section 29-11A-5 is amended to add a new section G stating ‘the children, youth, and families department shall retain registration information regarding a juvenile sex offender until the juvenile sex offender attains twenty-one years of age, at which time the children, youth and families department shall notify the department of public safety that the registration period of the juvenile sex offender has expired. Within ten days of receiving the notice, the department of public safety shall remove all information regarding the juvenile sex offender from the department’s database of sex offenders and remove or cause to be removed all information entered by any governmental entity in the state of New Mexico from all law enforcement databases’
- Section 29-11A-5 formerly F and G are re-lettered to (H) and (I) respectively.

#### **Section 6 addresses**

- Section 29-11A-5.1 is amended to replace web site with ‘website’
- Section 29-11A-5.1 (A) is amended to strike one of the following sex offenses and replace with the language ‘a tier 2 or tier 3 sex offense or required to register as a lifetime sex offender as a result of an out-of-state conviction’ and to strike subsections (1) through (5)
- Section 29-11A-5.1(E) is amended to strike web site and add ‘website’ throughout as well as strike language that the registration information provided to the public shall not include the sex offender's place of employment unless the sex offender’s employment requires the sex offender to have direct contact with children.
- Section 29-11A-5.1 (E)(3) is amended to strike modifying language that the employment involves direct contact with children to require posting of the sex offender’s employment on the internet website

#### **Section 7 addresses**

- Sec 29-11A-7 removes gendered language and replaces with ‘the sex offender’s/the sex offender’ throughout all parts of 29-11A-7

## **FISCAL IMPLICATIONS**

No appropriations are requested in HB 282, however, there will be fiscal implications on Sheriff’s Departments, the Judiciary, CYFD, Offices of the District Attorney, Law Offices of the Public Defender, the Department of Corrections, and enumerable other entities in the state.

The expansion of reporting requirements and the addition of crimes requiring registration will increase the number of registrants, the necessary number of staff able to process the registrants, and increase the number of technical violations. All will increase the fiscal burden upon the county sheriffs, the district attorneys, the law office of the public defender, and the judiciary.

The additional requirements added surrounding juveniles and the retroactive full adoption of the

federal Adam Walsh Child Protection and Safety Act of 2006 (AWA) will increase fiscal burdens on the district attorneys, the law office of the public defender, children youth and families department, and the judiciary.

As of 2021, the 15-year anniversary of AWA's adoption only 18 states, 4 territories, and 136 tribes were in substantial compliance with it. Reasons cited include the cost of compliance with the State of Washington estimating a cost of \$10.5 million to implement the Act for one year and only a loss of \$358 thousand in federal funding. States that did enact, for example, Ohio, faced constitutional challenges. Ohio's Supreme Court ultimately held that SB 10 was punitive and violated constitutional protections against retroactive laws. See [https://ofm.wa.gov/sgc/sopb/meetings/board/2016/02/AWA\\_memo.pdf](https://ofm.wa.gov/sgc/sopb/meetings/board/2016/02/AWA_memo.pdf) and [https://sac.ofm.wa.gov/sites/default/files/public/pdf/sex\\_offender\\_leveling\\_and\\_SORNA\\_tiering\\_report.pdf](https://sac.ofm.wa.gov/sites/default/files/public/pdf/sex_offender_leveling_and_SORNA_tiering_report.pdf), See also <https://www.dispatch.com/story/news/2011/07/13/supreme-court-tosses-out-sex/24116303007/>,

A study by the Justice Policy Institute created a state-by-state cost-loss survey on 2009 costs of implementing the Adam Walsh Act. The estimate for New Mexico was that implementation of AWA in 2009 would cost New Mexico \$3,195,121 and that the amount of Byrne money New Mexico received in 2006 was only \$1,879,901 so the cost of losing 10% of that Byrne money would amount to a loss of \$187,990. The report found that AWA required states to register more people and track them for longer periods without substantial additional federal funding. The 2020 U.S. Department of Justice revised SORNA review of New Mexico highlights the significant costs New Mexico would expend to reach compliance with an added consideration of the extensive costs to maintain that compliance. See [https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/walsh\\_act.pdf](https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/walsh_act.pdf), see also <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/new-mexico-hny.pdf>

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 282 seeks to implement many of the segments of the federal Adam Walsh Act with which New Mexico has been found to not comply. The legislation, however, fails to recognize the immense impact such action will have on the state's budget, the ability of the criminal justice system to fulfill the amendments, and the lack of scientific data to support the changes. Additionally, the amendments sought by HB 282 create a significant likelihood of legal challenges based on due process and ex post facto application as well as potential ineffective assistance of counsel claims. Further, the implementation of HB 282 would greatly increase technical violations leading to increased violation allegations and subsequent incarceration. See <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1041&context=jcl>

Enactment of HB 282 would require New Mexico to disregard scientific data and consider all cases and the treatment of convicted sex offenders based on the federally mandated tier of the offense as opposed to any use of risk assessment or consideration of facts specific to the case at hand. It requires a one size fits all approach and will increase incarceration without regard to subsequent recidivism rates by increasing a focus on technical violations which may be

impossible for compliance i.e. requiring a homeless individual to register in every relevant county, in person, within three days of the triggering event. Enactment would also increase the number of individuals required to register and require some individuals to renew their registration every ninety days regardless of their performance on release or circumstances.

The amendments HB 282 seek regarding juveniles especially disregard scientific studies regarding low levels of recidivism in juveniles. The underpinnings of our juvenile justice system are based on habilitation, rehabilitation, addressing treatment needs, and successful reintegration of youth into the community. AWA would remove protections that are in place that provide opportunities to rehabilitate juvenile sex offenders (more properly named ‘child who causes sexual harm’) through the elimination of confidentiality of juvenile records and would identify these children online. AWA will obliterate their ability to ever integrate into society as responsible and productive members of the community. Scientifically juvenile justice must consider brain development with the knowledge that children’s brains are not fully developed common knowledge. Juvenile sex offenders generally show lower rates of recidivism for sexual offenses and treatment and rehabilitation efforts are highly successful. AWA treats adults and juveniles the same and ignores the goals of juvenile justice. *See* <https://hastingslawjournal.org/wp-content/uploads/2014/03/Halbrook-65.1.pdf> *See also* <https://lawreview.law.pitt.edu/ojs/lawreview/article/view/129/129>

#### **PERFORMANCE IMPLICATIONS**

HB 282 would significantly increase expenses on multiple entities including the Department of Corrections, the judiciary, district attorneys, public defenders and children, youth and families. The changes sought by HB 282 are not statistically shown to increase or enhance public safety but they do, as shown by other states referenced herein, significantly increase the cost to the state and add substantial burden to a system which is already underfunded and overburdened.

#### **ADMINISTRATIVE IMPLICATIONS**

Enactment of HB 282 will require significant revision to processes and forms as well as significant improvements to staffing and oversight. Funds provided by federal entities are insufficient to meet the increased burden which will necessitate diversion of funds from other vital programs and efforts.

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

Conflicts with the Children’s Code *See Sec. 32A-2-2 NMSA 1978*

Conflicts with the protections outlined in the New Mexico Constitution including but not limited to Art. 2 Sec 19

#### **TECHNICAL ISSUES**

The necessary infrastructure and framework to fully implement HB 282 are not currently feasible and would necessitate an immense investment in New Mexico’s justice system and connected entities.

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

none identified

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



While New Mexico will continue to lose 10% of Byrne Justice Assistance Grant that amount averages \$100,000 compared to an estimated \$3,000,000 annual price tag to fulfill all aspects of AWA.

## **AMENDMENTS**