

LFC Requester:	Scott Sanchez
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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 January 31, 2024
Bill No: HB 282

Sponsor: Dixon
Short Title: Sex Offender Legislation and Federal Law

Agency Name and Code NM Sentencing Commission (354)
Number: _____
Person Writing Douglas Carver
Phone: 505-239-8362 **Email** dhmcarver@unm.edu

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 282 makes a number of changes to the Sex Offender Registration and Notification Act (SORNA) (Section 29-11A-1 *et seq.*).

In Section 1, the purpose of the Act (Section 29-11A-2) is amended by adding a further purpose, “to comply with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006.”

In Section 2 of the bill, the SORNA definitions (Section 29-11A-3) are amended as follows:

- a definition is added for "juvenile sex offender", which is defined as “a person fourteen years of age or older who has been adjudicated delinquent for committing a sexually violent offense.”
- the definition of “out-of-state registrant” is broadened so that in addition to having a residence in New Mexico, the definition also applies to someone who is employed or attends school in the state.
- the definition of “sex offender” is changed as it pertains to residents of New Mexico to add a beginning date of someone convicted of a sex offense on or after July 1, 1995, and now also includes juvenile sex offenders who received an adult sentence.
- the definition of “sex offense” is expanded to capture offenses “on or after the date the offense became registerable in New Mexico.”
- the definition of “sex offense” also gets 5 new offenses added to it: 1) patronizing prostitutes, when the sex offender knew or should have known that the person believed to be a prostitute was younger than 16; 2) promoting prostitution, when the sex offender knew or should have known that the victim was younger than 16; 3) accepting earnings of a prostitute, when the sex offender the person engaged in prostitution was younger than 16; 4) human trafficking for a sexual purpose, when the victim is younger than 16; and 5) criminal sexual communication with a child.
- the definition of “sex offense” additionally would now include conspiracy to commit any of the listed offenses.
- a definition of "sexually violent offense" is added, meaning the following crimes: 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.

- finally, the various crimes that constitute sex offenses are divided into three tiers – tier 1 sex offenses, tier 2 sex offenses, and tier 3 sex offenses.

Note: While there is strikethrough and underlining for the definition of “institute of higher education”, there were no changes to the definition – it was merely moved in the definitions section to be placed in alphabetical order.

Section 3 of the bill makes a number of amendments to Section 29-11A-4, concerning registration of sex offenders. It adds the requirement that juvenile sex offenders shall register with CYFD within three business days of release. The requirements for registration with county sheriffs after release, change of employment, and similar personal changes for other sex offenders is similarly amended from five to three business days throughout this section. The changes to this section also add that registration for these non-juvenile offenders in most (but not all) instances has to be in person. Additionally, sex offenders who have any changes to the situations described in this section have to notify the county sheriff immediately in writing of the changed information – the present statute gave the offenders five business days to notify sheriffs of the changed information.

Section 3 of the bill also changes the verification of registration requirements for offenders, based on the tier of their offense. Tier 3 offenders have the most stringent reporting requirement of every 90 days for the rest of their life. The next level of verification would now be for Tier 2 offenders, who would have to verify their registration with DPS, rather than the sheriff, once every six months (as in present statute), but now for 25 years, rather than the present 10 – also added is that the clock for when they have to verify starts from their initial registration. Added to this statute is that Tier 1 offenders have to verify annually to DPS prior to December 31 of each subsequent calendar year for 15 years from the date of initial registration. Also added is that an offender required to register for life as a result of an out-of-state conviction also has to follow the verification requirement of every 90 days with DPS for the rest of their life (as is would be the case with Tier 3 offenders in the bill). Out-of-state registrants who do not have lifetime reporting requirements are now required to verify with DPS, rather than the sheriff. Juveniles sex offenders are required to register until they reach 21 or until they are released from supervision of CYFD. Sex offenders convicted of a second or subsequent sex offense have their verification requirements shifted to DPS from the sheriff.

Section 3 of the bill also adds that the requirement for in person verification is suspended for sex offenders if the sex offender is confined to a hospice facility or skilled nursing home.

Also in Section 3 of the bill, the requirement that DPS shall establish a secure system to permit sex offenders to notify DPS electronically of any change in registration information has been struck. Instead, a sex offender has to 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.

Section 4 of the bill amends Section 29-11A-4.1, concerning procedures for when a sex offender moves from New Mexico to another state. The only change is that the masculine pronoun “he” is changed to the gender-neutral “sex offender”.

Section 5 of the bill amends Section 29-11A-5, concerning local and central registries, by modifying the subsections regarding the length of time registration records are retained by DPS. Under the new scheme, Tier 3 offenders registration information is retained for the remainder of

the sex offender's natural life, which is the case for the list of most serious offenders in present law. Tier 2 offenders, which corresponds to the present statute's list of less serious offenses, have their records retained for 25 years, an increase from the present 10 years. Tier 1 offenders will have their records retained for 15 years. CYFD shall retain the records for juvenile sex offenders until the juvenile turns 21; at that time, CYFD shall notify DPS that the registration period of the juvenile sex offender has expired – DPS then has ten days to remove all information regarding the juvenile sex offender from their 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 6 of the bill amends Section 29-11A-5.1, concerning public access to registration information and community notification. Under the changes, the current list of crimes subject to having their registration information forwarded to the District Attorney and, if applicable, the chief law enforcement officer of a municipality of their place of residence is replaced with Tier 2 and 3 offenders, or those required to register as a lifetime sex offender as a result of an out-of-state conviction. This section of the bill also removes the ban on providing the public with the place of employment of a sex offender.

Section 7 of the bill (like with Section 4), amends Section 29-11A-7, concerning notice to sex offenders of their duty to register, solely to change the masculine pronoun “he” to the gender-neutral “sex offender”.

Section 8, the final section of the bill, is an Applicability section, making the provisions of the bill apply to any person convicted of a sex offense on or after July 1, 1995.

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

According to the DPS on line sex offender registry (available here: https://www.communitynotification.com/cap_main.php?office=55290), there are 2,831 published offenders on the registry, 381 of whom are incarcerated.

The broadened definition of “out-of-state registrant” in Section 2 of the bill includes a person who “attends school” in New Mexico; however, no definition of “school” is provided, which would leave to the courts to decide what kind of educational attainment counts as “school” for the purpose of registration. Contrast this with the definition of sex offender, which, at Section 29-11A-3(H)(4)(b) in present law, specifies that it includes a person who “is a resident of another state and who has been convicted of a sex offense pursuant to state, federal, tribal or military law, but who is . . . enrolled on a full-time or part-time basis in a private or public school or an institution of higher education in New Mexico.”

There are two problems with the lists of crimes in the three tiers of offenses in Section 2 of the

bill:

1) Tier 1 includes sexual exploitation of children, as provided in Subsection A of Section 30-6A-3. Tier 2 includes the entirety of that section of law. Thus Subsection A of Section 30-6A-3 is both a Tier 1 and a Tier 2 offense.

2) The bill states, “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,” is a Tier 3 offense. That language is confusing. It could mean that all kidnapping with intent to inflict a sex offense, regardless of age, is a Tier 3 offense, *and* that any kind of kidnapping of a victim younger than 18 is a Tier 3 offense. Or the language could mean that kidnapping with the intent to inflict a sex offense when the victim is under 18 is a Tier 3 offense, and thus the bill has not made any provision in the tiers for kidnapping with the intent to inflict a sex offense elsewhere in the tiers when the victim is 18 years of age or older. The language here should be clarified.

The requirement that a sex offender has to notify the county sheriff immediately in writing on an approved form of changed information or circumstance, in Section 3 of the bill, could be an insuperable burden. Sex offenders often live in precarious situations, subject to sudden changes in circumstances. It seems more likely than not that an immediate notification would probably not be possible, even in the best of circumstances. It is unclear why other requirements in this section were changed from five business days to three business days, but this requirement was changed from five business days to immediate notification.

A comparison of sex offender registration requirements can be found on the website of the Collateral Consequences Resource Center. See Restoration Rights Project, “50-State Comparison: Relief from Sex Offense Registration Obligations” (updated Oct. 2022) (available at: <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>).

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