

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

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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 01/31/2024
Bill No: HB282

Sponsor: Meredith Dixon & Marian Matthews
Short Title: SEX OFFENDER REGISTRATION & FEDERAL LAW

Agency Name and Code
Number: 770 - NMCD
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	N/A	N/A

(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	NFI	Indeterminate	Indeterminate	Indeterminate	Recurring	General

(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: House Bill 282 amends the Sex Offender Registration and Notification Act to comply with federal law (specifically, the Adam Walsh Child Protection and Safety Act of 2006). The bill calls for enhanced registration and verification requirements for sex offenders and juvenile sex offenders. Adds definitions for “juvenile sex offender” and “sexually violent offense”; amends definition of “sex offender” and “sex offense”; and specifies three tiers of sex offenses. Document retention requirements for DPS and CYFD for sex offender registration information are changed. There are numerous instances of replacement of pronouns with “sex offender.”

DEFINITIONS and TIERS:

“juvenile sex offender” means a person 14 years of age or older who has been adjudicated delinquent for committing a sexually violent offense;

"sexually violent offense" means aggravated criminal sexual penetration, or criminal sexual penetration in the first, second, or third degree;

“sex offender” means a person who is a resident of New Mexico who, on or after July 1, 1995, is convicted of a sex offense pursuant to state, federal, tribal or military law and includes a juvenile sex offender who received an adult sentence. This definition is in addition to the current statutory definition;

"sex offense" means any of the existing 12 listed offenses or their equivalents in any other jurisdiction committed on or after the date the offense became registerable in New Mexico plus the following newly added offenses:

- patronizing prostitutes when the sex offender knew or should have known that the person believed to be a prostitute was younger than 16 years of age;
- promoting prostitution when the sex offender knew or should have known that the victim was younger than 16 years of age;
- accepting earnings of a prostitute when the sex offender knew or should have known that the person engaged in prostitution was younger than 16 years of age;
- human trafficking for a sexual purpose when the victim is younger than 16 years of age;
- criminal sexual communication with a child; and

- conspiracy to commit any of the listed offenses in the definition of “sex offense” except attempt.

TIER 1 SEX OFFENSE means:

1. enticement of a child, as provided in § 30-9-1;
2. sexual exploitation of children, as provided in § 30-6A-3(A);
3. criminal sexual contact in the fourth degree, as provided in § 30-9-12;
4. aggravated indecent exposure, as provided in § 30-9-14.3; and
5. attempt to commit any of the sex offenses set forth above.

TIER 2 SEX OFFENSE means:

1. sexual exploitation of children, as provided in § 30-6A-3;
2. sexual exploitation of children by prostitution, as provided in § 30-6A-4;
3. false imprisonment, as provided in § 30-4-3, committed with the intent to inflict a sex offense;
4. patronizing prostitutes, as provided in § 30-9-3(B), 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 16 years of age;
5. promoting prostitution, as provided in § 30-9-4, when there is a separate finding of fact that the sex offender knew or should have known that the victim was younger than 16 years of age;
6. accepting earnings of a prostitute, as provided in § 30-9-4.1, 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 16 years of age;
7. criminal sexual penetration in the fourth degree, as provided in § 30-9-11, when the victim is 16 years of age or older;
8. criminal sexual contact of a minor, as provided in § 30-9-13, when the victim is 13 to 18 years of age;
9. incest, as provided in § 30-10-3, when the victim is over 16 but younger than 18;
10. criminal sexual communication with a child, as provided in § 30-37-3.3;
11. human trafficking, as provided in § 30-52-1, for a sexual purpose, when the victim is younger than 16 years of age;
12. child solicitation by electronic communication device, as provided in § 30-37-3.2(C);
13. solicitation to commit criminal sexual contact of a minor, as provided in §§ 30-9-13 and 30-28-3; and
14. attempt to commit any of the sex offenses set forth above.

TIER 3 SEX OFFENSE means:

1. kidnapping, as provided in § 30-4-1, when committed with intent to inflict a sex offense and when the victim is younger than 18 years of age;
2. aggravated criminal sexual penetration or criminal sexual penetration in the first, second or third degree, as provided in § 30-9-11;
3. criminal sexual penetration in the fourth degree as provided in § 30-9-11, when the victim is younger than 16 years of age;
4. criminal sexual contact of a minor, as provided in § 30-9-13, when the victim is younger than 13 years of age;
5. incest, as provided in § 30-10-3, when the victim is younger than 16 years of age; and
6. attempt to commit any of the sex offenses set forth above.

REGISTRATION OF SEX OFFENDERS

Juvenile Sex Offender Registration

A juvenile sex offender must register with CYFD within three business days of release into the community after an adjudication for a sexually violent offense. A juvenile offender's obligation to register extends until the offender is 21 years old or is released from CYFD supervision.

Other State Sex Offender Registration

A sex offender who is a resident of another state but is employed in or attending school in New Mexico must register in person with the county sheriff within three business days of beginning work or attending school. (Current law requires registration and notification within five business days.)

Registered Sex Offender Notification Obligations

A registered sex offender must immediately send written notice to the county sheriff of any change in the offender's personal information, including residence and name or employment (however, a later section of the bill directs a sex offender to appear in person to notify the county sheriff of changes). A homeless registered sex offender must register each temporary address or location in person with the county sheriff for each county in which the offender is temporarily located, within three days after a change in living arrangements or temporary location. Enrollment at an institution of higher learning also requires notification to the law enforcement entity responsible for the institution and the registrar. Enrollment as a student at a public or private school also requires notification to the principal of the school.

A TIER 3 SEX OFFENDER must verify registration information with the county sheriff at least once every 90 days after initial registration, for the remainder of the offender's natural life.

A TIER 2 SEX OFFENDER must verify registration information with the Department of Public Safety every six months for 25 years from initial registration.

A TIER 1 SEX OFFENDER must annually verify registration information with DPS for 15 years from initial registration.

TIER 1 AND TIER 2 SEX OFFENDERS who are convicted of subsequent sex offenses must verify registration information with DPS at least once every 90 days for the remainder of their natural life.

A sex offender who is required to register for the remainder of the offender's life for an out-of-state conviction must verify registration information with DPS at least once each 90 days. An out-of-state registrant must verify information with DPS for the duration of time remaining and at the same frequency required in the convicting jurisdiction, but no less than every six months.

A sex offender is relieved of in-person verification requirements if confined to a hospice facility or skilled nursing home.

FISCAL IMPLICATIONS

Enhancing registration and verification requirements and adding definitions doesn't appear to have a fiscal impact in the immediate future but could increase the potential number of sex offenders who will violate as a result of failing to register or fail to follow up with local sheriff departments based upon the tier that they fall under. Increased violations could result in more revocations taking place and offenders being sentenced to terms of incarceration or extended probation/parole supervision. It is difficult to estimate the fiscal impact this would have but there is a potential to see an increase in the number of sex offenders being returned to prison for violating these proposed registration and verification changes.

NMCD would need to create a data extract or update the information currently shared with DPS, this would take approximately 30 analyst days to implement. Considering the average loaded wage of an IF pay band for senior analyst of \$59.36, the cost would be around \$15,000. No additional operating budget impact is estimated from an IT standpoint.

SIGNIFICANT ISSUES

None proposed by the Corrections Department.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

None for the Corrections Department.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None for the Corrections Department.

TECHNICAL ISSUES

Both the existing statutory text and some of the proposed new text use the term "department of public safety," but the "department of public safety" is defined as "department" in the definition section of the Sex Offender Registration Act. NMSA 1978, § 29-11A-3(C).

The definitions of "tier 1 sex offense" and "tier 2 sex offense" overlap regarding sexual exploitation of children. Tier 1 references NMSA 1978, § 30-6A-3(A) and tier 2 references NMSA 1978, § 30-6A-3, which would include subsection A.

The first sentence of the proposed new subsection (E) in NMSA 1978, § 29-11A-4 may be superfluous because of the changes in the new subsection (D).

OTHER SUBSTANTIVE ISSUES

None for the Corrections Department.

ALTERNATIVES

None proposed by the Corrections Department.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

None proposed by the Corrections Department.