

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

Section 1 amends Section 30-6A-3 of the Criminal Code entitled “Sexual Exploitation of Children.”

Subsection A is amended to increase possession of “obscene visual or print medium depicting any prohibited sexual act or simulation of such act” (commonly known as CSAM (child sexual abuse material)) from a fourth degree felony for sexual exploitation of children to a third degree felony for sexual exploitation of children. It also increases the additional sentence for possession of CSAM of a child under the age of thirteen from one to five years, and increases the mandatory portion of that sentence from one to three years.

Subsection C is amended to increase distribution of CSAM from a third degree felony for sexual exploitation of children to a second degree felony for sexual exploitation of children.

Section 2 amends Section 40-4-7.3 of Chapter 40 (Domestic Affairs) entitled “Accrual of Interest – Delinquent Child and Spousal Support” to increase the interest on delinquent child support from four to six and one half percent. The section also makes some stylistic changes for clarity. Subsection E, which currently provides that the human services department has the authority to forgive accrued interest in certain circumstances, is amended to change “human services department” to “health care authority.”

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.

None for this agency.

SIGNIFICANT ISSUES

Section 31-18-15 was amended in 2016 to include new categories of sentencing for fourth, third, and second degree felonies “for sexual exploitation of children.” A fourth degree felony for this crime is 10 years; a third degree felony is 11 years; and a second degree felony is 12 years. Under this bill, distribution of CSAM would carry the same 12-year penalty as manufacture of CSAM and the basic sentence for possession would be increased from 10 to 11 years.

This original sentencing amendment happened partly in response to the Supreme Court’s holding that the unit of prosecution of possession of CSAM crimes is unclear and that the rule of lenity therefore applies to merge multiple counts for possessing multiple images into just one count of possession. *See generally State v. Olsson*, 2014-NMSC-012, 324 P.3d 1230. Even possession of thousands of images can be merged into one count.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 32 is somewhat related in that it amends Section 30-6A-4 entitled "Sexual Exploitation of Children by Prostitution" to raise the age of a potential victim from sixteen to eighteen.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

n/a

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a