

LFC Requester: _____

**AGENCY BILL ANALYSIS
2026 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 2/2/2026

Bill No: HB 266-280

Sponsor: Reps. Elaine Sena Cortez and
Andrea Reeb

**Agency Name
and Code
Number:** LOPD-280

Person Writing Mark A. Peralta-Silva

**Short
Title:** Penalty for Sexual Exploitation
of Children

Phone: (505) 369-
3604

Email mark.peralta-
silva@lopdnm.us

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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: This bill covers two disparate subjects, creating a possible constitutional issue. *See infra*, **Significant Issues**.

First, Section 1 of the bill increases the penalty for two crimes under NMSA 1978, Section 30-6A-3, the Sexual Exploitation of Children statute. The proposed bill increases the penalty for a person who intentionally possesses exploitation material from a “fourth-degree felony for sexual exploitation of children” to a “third-degree felony for sexual exploitation of children.” Because these are special felonies, this increases the basic sentence from ten to eleven years. *See* NMSA 1978, Section 31-18-16(A).

Moreover, the statute currently enhances the possession penalty by one year when a separate finding of fact is made that the child depicted is under the age of thirteen, and that year is mandatory (may not be suspended or deferred). Under the proposed bill, the basic sentence would be enhanced by five years, and would make three of those five years mandatory.

Section 1 of the bill would also amend Subsection C of Section 30-6A-3 to increase the penalty for intentionally distributing this material from a “third-degree felony for sexual exploitation of children” to a “second-degree felony for sexual exploitation of children.” Because these are special felonies, this increases the basic sentence from eleven to twelve years. *See* § 31-18-16(A).

Section 2 of the bill would amend NMSA 1978, Section 40-4-7.3, the statute governing the accrual of interest for delinquent child support. The bill would increase the interest rate for delinquent child support from four (4) to six-and-one-half (6.5) percent. The bill also makes several technical changes to this statute and removes references to the Human Services Department in Subsection E and replaces them with references to the Health Care Authority.

FISCAL IMPLICATIONS

As with many crime bills, there is the potential for an increase in penalties to have marginal to modest increases in the number of resources the LOPD has to provide to meet its constitutional duties. By increasing the penalties for two crimes under Section 30-6A-3, crimes which already require complex and careful representation, there is the risk that more cases will go to trial and thus increase the financial demands on LOPD and other judicial actors.

SIGNIFICANT ISSUES

The most significant issue posed by this bill is what is known as log-rolling. Under the New Mexican Constitution, Article IV, Section 16, no bill shall embrace more than one subject. *See* N.M. Const. Art. IV, § 16 (“no bill embracing more than one subject shall be passed except general appropriation bills and bills for the codification or revision of the laws; but if any subject is embraced in any act which is not expressed in its title, only so much of the act as is not so expressed shall be void.”). This provision provides exceptions for appropriation bills and bills revising or codifying the laws; in other words, legislative acts necessarily requiring the consideration of multiple subjects.

Here, the issue is that this bill relates to “Children.” However, it encompasses two discrete subjects: (1) criminal penalties for crimes that involve the possession, manufacture and distribution of obscene material involving children, and (2) child and spousal support. Put another way, the criminal penalty increases relate to Crime, and the increase in interest for delinquent child support relates to Child Support. It is likely that if this bill were passed, these increases to Section 30-6A-3 would face litigation raising constitutional challenges to these changes because they were inappropriately enacted. The concern with logrolling is that the public may not receive “reasonable notice,” such that the public would not have the “opportunity to be heard on the subject.” *Citizens for Fair Rates & the Env’t v. New Mexico Pub. Regul. Comm’n*, 2022-NMSC-010, ¶ 60, 503 P.3d 1138 (internal quotation marks and citations omitted). It is likely this sort of notice argument would be made because a relating to clause that references “Children,” may not provide sufficient notice that the bill both increases penalties for a specific set of crimes and changes the interest rate for delinquent child support.

This analyst would recommend these two proposals be separated into two new separate bills or two existing bills that more appropriately capture the discrete subjects in each section of the bill. *See* Legislative Drafting Manual 36 (Sept. 22, 2015).

As for the substance of the criminal aspects of the bill, the increased penalties for the child pornography charges are unlikely to have a greater deterrent effect than they currently do. Punishment has been one of the preferred methods to address damaging and unwanted behavior. However, decades of empirical work about the effects of punishment (including incarceration and capital punishment) on crime actually show that there is no conclusive evidence that stricter punishment deters criminal conduct. The research finds that the certainty of punishment is more important than its severity, and that punishment only deters if there is a threshold level of certainty of getting caught and punished. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail.

See https://wp.nyu.edu/compliance_enforcement/2021/12/28/the-behavioral-code-four-behavioral-science-insights-for-compliance-and-enforcement/

In 2016, the penalty for possession was increased from 18 months to ten years with the addition of the mandatory enhancement, and the penalty for distribution was increased from three years to eleven. *See* 2016 HB 65. If those *dramatic* penalty increases have failed to deter the behavior, it is unlikely that the proposed one-year increase for each will have a more significant effect.

The greatest penalty changes apply to possession where there is an enhancement for material

depicting a child under thirteen adding another five (5) years to the basic sentence, three (3) years of which cannot be suspended or deferred. What this means is an individual found in possession of material depicting a child under the age of thirteen would be punished by sixteen (16) years, three (3) of which cannot be suspended or deferred. As noted above, there has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, this change would, at most, lead to an increase in incarceration, and not any beneficial impact on public safety.

This analyst cannot opine or comment on the propriety or usefulness of the changes to the interest rate for delinquent child support. This statute is not criminal and thus does not fall within the expertise of this analyst or the LOPD.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS