

LFC Requester:	Scott Sanchez
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AGENCY BILL ANALYSIS – 2026 SESSION

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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}

Date Prepared: 02FEB26 *Check all that apply:*
Bill Number: HB266 Original Correction
 Amendment Substitute

Sponsor: Rep. Elaine Sena Cortez, Rep. Andrea Reeb **Agency Name and Code Number:** 790 – Department of Public Safety
Short Title: Penalty for Sexual Exploitation of Children **Person Writing:** Matthew Broom, Deputy Chief
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		
NFI	NFI	N/A	N/A

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		
NFI	NFI	NFI	N/A	N/A

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	N/A	N/A	N/A

(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

House Bill 266 contains two substantively unrelated sections. The Bill raises the criminal penalties for knowingly possessing or intentionally distributing child pornography and raises the interest rate on delinquent child support payments from 4% to 6.5% which shall accrue from the date payment was due until it is paid. The Bill also updates statutory references from “human services department” to “health care authority” to reflect the agency reorganization effectuated by Laws 2023, Chapter 205 (SB 16).

FISCAL IMPLICATIONS

No Fiscal Impact to DPS.

SIGNIFICANT ISSUES

Section 1 – Penalty Restructuring and Sentencing Interaction. The bill amends only Subsections A and C of Section 30-6A-3, leaving Subsections D through H untouched. Under Section 31-18-15(A) NMSA 1978, the New Mexico Criminal Sentencing Act assigns distinct basic sentences to sexual-exploitation-of-children felonies. By upgrading possession from a fourth degree to a third-degree felony, the basic sentence increases from 10 to 11 years. Critically, the under-age-13 enhancement in Subsection A is increased from one year to five years, producing a new composite basic sentence of 16 years for possession involving a victim under 13. The mandatory-minimum non-suspendable portion rises from one year to three years. This enhancement would make the possession sentence (16 years) significantly exceed the basic sentence for manufacturing under Subsection E (12 years as a second-degree felony), which arguably inverts the traditional severity hierarchy between possession and manufacturing offenses.

By upgrading distribution from a third degree to a second-degree felony, the bill places distribution at the same felony level as manufacturing under Subsection E. This collapses the statutory distinction between distribution and manufacturing – two offenses with historically different culpability levels. Subsection D (causing or permitting a child to engage in a prohibited sexual act) remains a third-degree felony, meaning that a person who possesses CSAM under the amended Subsection A would now face the same felony classification as a person who directly causes a child to participate in the creation of such material. Courts or defense counsel may argue this creates Eighth Amendment proportionality concerns or undermines the rational basis for the penalty structure.

PERFORMANCE IMPLICATIONS

No Performance Implications to DPS.

ADMINISTRATIVE IMPLICATIONS

No Administrative Implications to DPS.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Section 1 relates to any pending 2026 session legislation addressing AI-generated CSAM or sexual offenses against children, including bills introduced that would create AI-specific enhancements. Section 1 also has a relationship to the Sex Offender Registration and Notification Act, Section 29-11A-3 et seq. NMSA 1978, which requires lifetime registration for all offenses under Section 30-6A-3 regardless of felony degree.

TECHNICAL ISSUES

The bill amends Section 30-6A-3 NMSA 1978 but references sentencing provisions under Section 31-18-15 NMSA 1978 and additional penalties under Section 30-9-11 NMSA 1978, neither of which is amended by this bill. The full sentencing impact requires cross-reference to the basic sentence table in Section 31-18-15(A), which provides enhanced basic sentences for sexual exploitation of children offenses.

Youthful Offender Proviso Ambiguity. Amended Subsection A retains the proviso: “provided that when the offender is a youthful offender, the sentence imposed by this subsection may be increased by one year.” The bill increases the under-age-13 enhancement from one year to five years and the mandatory minimum from one year to three years, yet leaves the youthful offender proviso’s one-year figure unchanged. Under the prior version, this ambiguity was less consequential because both the general enhancement and the youthful offender increase were each one year; the parallelism made the proviso’s function reasonably discernible. In the amended scheme, the five-to-one disparity renders the proviso materially unclear. Specifically: (1) it is uncertain what baseline “increased by one year” modifies — the 11-year third degree basic sentence, the 16-year composite (basic sentence plus five-year enhancement), or the 3-year mandatory-minimum portion; (2) it is unclear whether the one-year youthful offender increase operates in lieu of or in addition to the five-year under-age-13 enhancement; and (3) the proviso does not specify whether the additional year is subject to the non-suspension/non-deferral mandate that governs the first three years of the sentence.

OTHER SUBSTANTIVE ISSUES

The bill does not address AI-generated child sexual abuse material, a rapidly emerging law enforcement concern. As of January 2026, the New Mexico Department of Justice has brought prosecutions for AI-generated CSAM under existing Section 30-6A-3 manufacturing provisions. Separate legislation, House Bill 141 (HB141), Artificial Intelligence Accountability Act, would create AI-specific enhancements and civil remedies. The penalty increases in HB 266 would apply to AI-generated material prosecuted under the existing statutory framework, but the bill does not specifically target AI-generated content or close the gap for AI imagery that may not involve a real child participant.

Federal Alignment: Under federal law, 18 U.S.C. § 2252A imposes a mandatory minimum of 5 years for first-offense possession of child pornography. The current New Mexico fourth degree felony classification, even with the enhanced 10-year basic sentence, permits suspension or deferral of the full term. The bill’s three-year mandatory minimum for under-age-13 victims brings New Mexico closer to federal mandatory sentencing standards. The bill’s upgrade of distribution to a second-degree felony aligns more closely with the federal mandatory minimum of 5 to 20 years for distribution offenses under 18 U.S.C. § 2252A(b)(1).

ALTERNATIVES

The Legislature could consider amending all subsections of Section 30-6A-3 to maintain proportional sentencing across the possession-distribution-manufacturing hierarchy, rather than amending only Subsections A and C. Alternatively, the Legislature could adopt a volume-based tiered approach (as proposed in the 2024 session’s HB 206) that elevates penalties based on the quantity of images possessed, rather than applying a blanket one-degree felony upgrade to all possession offenses.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain. New Mexico’s penalties for CSAM possession would continue to fall below the federal five-year mandatory minimum for first offenses under 18 U.S.C. § 2252A. The mandatory minimum non-suspendable portion for possession involving victims under 13 would remain at one year.

AMENDMENTS

None at this time.