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## FISCAL IMPACT REPORT

SPONSOR Sariñana ORIGINAL DATE 01/23/21  
LAST UPDATED 02/17/21 HB 31/aHJC  
SHORT TITLE Military Justice Code Sex Crimes Definitions SB \_\_\_\_\_  
ANALYST Glenn

### **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### **SOURCES OF INFORMATION**

LFC Files

#### Responses Received From

Department of Military Affairs (DMA)  
Legal Office of the Public Defender (LOPD)  
Administrative Office of the District Attorneys (AODA)  
Office of the Attorney General (NMAG)

### **SUMMARY**

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 31 deletes language in Section 20-12-51(A) providing that a person who is guilty of rape shall be punished “by death or other punishment” as a court martial may direct. As amended, the provision provides the person “shall be punished as a court-martial may direct...”

#### Synopsis of Original Bill

House Bill 31 updates Section 20-12-51 of the Code of Military Justice relating to rape and other sex crimes. The existing law excludes acts that otherwise constitute rape and other sex crimes if they are committed with a person’s wife. HB31 removes this exclusion, and states that marriage is not a defense for any conduct subject to criminal prosecution under Section 20-12-51.

The bill substantially expands the scope of conduct that will subject a person covered by the Code of Military Justice to criminal prosecution for rape and sexual assault, and adds additional crimes of aggravated sexual contact and abusive sexual contact. Terms used to describe the

covered crimes, such as “force,” “grievous bodily harm,” “sexual act,” and “sexual contact” are defined in the bill. “Consent” is defined as “freely given agreement to the conduct at issue by a competent person,” and the bill specifies in detail what does not constitute “freely given agreement” or consent.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

**FISCAL IMPLICATIONS**

DMA, LOPD and AODA note that the bill has no fiscal impact on state revenues. The sex crimes addressed in HB31 are prosecuted by the military judge advocate general in court martial proceedings under the Code of Military Justice, and involve federal funding and equipment.

**SIGNIFICANT ISSUES**

DMA states that HB31 is a positive change on an important social and military justice issue. Among other things, the bill eliminates an antiquated marital exception to rape from the 1984 version of the Code of Military Justice, which is repugnant to current legal standards. The amendments made by the bill adopt the current terminology of the Uniform Code of Military Justice (UCMJ) regarding sexual assault.

DMA also notes that the bill applies only to military members of the New Mexico National Guard. It does not apply to other Reserve service members or to Guardsmen deployed under federal law.

BG/al/rl