

LFC Requester:	
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**AGENCY BILL ANALYSIS
2017 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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: Date 2-8-17
Original **Amendment** **Bill No:** HB353
Correction **Substitute**

Sponsor: Sarah Maestas Barnes **Agency Code:** 264
Short Sex Offense Permanent **Person Writing** Gail MacQuesten
Title: No Contact Orders **Phone:** 466-0532 **Email** gailmacquesten@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Unknown	Unknown	Unknown	Unknown	Recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB14
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB353 enacts new provisions, and amends existing provisions, related to sexual offenses. It provides for the issuance of permanent no contact orders, and eliminates the statute of limitations for some sexual crimes against children.

Section 1 enacts new material providing for the issuance of permanent no contact orders as part of a defendant’s sentencing proceeding on any crime for which registration is required under the Sex Offender Registration and Notification Act. The victim has a right to be heard, and if the defendant opposes the order, the defendant must show cause why the order should not be issued. The judge shall issue the order if the judge determines that reasonable grounds exist for the victim to want to or need to prevent any further contact with the defendant. The court may order the defendant not to visit, follow, harass, assault, abuse or otherwise interfere with the victim, contact the victim by telephone, in writing or by electronic or any other means, and enter or remain present at the victim’s residence, school, place of employment or other specified places at times when the victim is present. A peace officer may arrest without a warrant and take into custody a restrained party the officer has probable cause to believe has violated an order. A violation is a misdemeanor. A second or subsequent violation shall result in a jail term of not less than seventy-two consecutive hours, which shall not be suspended, deferred or taken under advisement. The state or the defendant may move to rescind an order. Issuance of or changes to an order shall be entered into the national crime information center’s order of protection file.

Section 2 amends the definition section of the Missing Persons Information and Reporting Act to include in the definition of “missing person” a missing person who is or was protected by a permanent no contact order issued under HB353.

Section 3 removes the statute of limitation applicable to certain crimes against children, allowing prosecution at any time after an alleged criminal sexual penetration (when the victim is a minor) or alleged criminal sexual contact of a minor.

Section 4 amends NMSA 1978, Section 30-1-15, which addresses forbearance of costs by alleged victims of domestic abuse, stalking or sexual assault, to apply its provisions to the violation of a permanent no contact order issued under HB353.

Section 5 amends the definition section of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act to include protection orders issued under the sex offender

laws.

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.

The provision regarding no contact orders will increase costs for district attorneys, public defenders, the courts and law enforcement. District attorneys, public defenders and the courts will have increased costs related to sentencing proceedings for sexual offenses, because those proceedings will now include litigating no contact orders, and will have increased costs related to proceedings to enforce the orders. Law enforcement will have increased costs related to enforcing the orders.

Removing the statute of limitations from sexual offense crimes against children may increase the number of prosecutions of those offenses, increasing costs for prosecutors, defense counsel, and courts. It will be more difficult to prosecute and defend cases brought many years after the event.

SIGNIFICANT ISSUES

Permanent no contact orders

New Mexico's Family Violence Protection Act already provides for orders of protection in various forms for various threats, including extended orders of protection issued as part of the sentencing proceeding of a person convicted of criminal sexual penetration. In those cases, when the court's criminal jurisdiction over the convicted defendant ends, the victim may request that the order be extended for any period, including a period as long as the victim's lifetime. See NMSA 1978, Section 40-13-5.1.

HB353 provides an alternative source for a protective order, which applies to all crimes for which registration is required under the Sex Offender Registration and Notification Act (SORNA). The issuance of the order under HB353 occurs at the sentencing proceeding, and lasts as long as the lifetime of the defendant (although it may be revoked or modified). The orders issued under HB353, like orders issued under the Family Violence Protection Act, allow for warrantless arrests, and carry the same penalties for violations. See NMSA 1978, Section 40-13-6.

Removing the statute of limitations

HB353 removes the statute of limitations from certain sexual offenses against children.

Currently, NMSA 1978, Section 30-1-9.1 provides that the standard statutes of limitation apply to sexual offenses against children. The time limit for bringing a prosecution is tied to the seriousness of the crime: there is a one year statute of limitations for a petty misdemeanor, a two year statute of limitations for a misdemeanor, a five year statute of limitations for a third or fourth degree felony, a six year statute of limitations for a second degree felony, and no statute of limitations for a capital felony or a first degree violent felony. However, the applicable time period does not begin to run until the victim is eighteen, or the violation is reported to a law enforcement agency, whichever occurs first. So, if the charge is a fourth degree felony criminal

sexual contact of a minor, the five year statute of limitation will not run until the victim turns 18 or the crime is reported, whichever is first. Such a crime committed against a 10 year-old-child and not reported would in effect have a 13-year statute of limitation, because the five year time limit would not begin until the child turned 18.

HB353 removes all statutes of limitation for the crimes of criminal sexual penetration when the victim is a child, and for criminal sexual contact of a minor.

The effect of HB353 is to greatly expand the time for prosecuting sexual crimes against children. For example, if the parents reported a misdemeanor crime of criminal sexual contact committed against their child, the statute of limitations under current law would be two years. Under HB353 there would be no statute of limitations- theoretically the crime could be prosecuted decades after the event. There are practical difficulties to prosecuting and defending such cases. Evidence and witnesses can disappear, and memories fade.

PERFORMANCE IMPLICATIONS

The district attorneys will have increased workload in obtaining and enforcing permanent no contact orders, and may have additional prosecutions of sexual assault cases with child victims.

ADMINISTRATIVE IMPLICATIONS

See above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB14 would add second degree murder to the list of offenses for which there is no statute of limitations.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Victims will be limited to seeking protective orders under the existing Family Violence Protection Act provisions. The existing statutes of limitation will apply to sexual offenses against children.

AMENDMENTS

None proposed.