

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:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB43 amends New Mexico’s sexual offense statutes. The effect of the amendments is to increase the degree of offense and/or expand the scope of the offense when the crimes of criminal sexual penetration and criminal sexual contact are committed against a child thirteen or older.

Amendment of the definition section (NMSA 1978, Section 30-9-10(A)):

HB43 amends the definition of “force or coercion” to include “the perpetration of criminal sexual penetration or criminal sexual contact on a child, with or without the child’s consent, by a person in a position of authority.” (“Position of authority” is defined elsewhere in the statute as “that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child.” NMSA 1978, Section 30-9-10(E).)

Amendment of criminal sexual penetration (NMSA 1978, Section 30-9-11):

HB43 amends the statute defining criminal sexual penetration in the fourth degree by removing language making it a fourth degree felony to commit criminal sexual penetration

“perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.”

Because of the amended definition of “force or coercion,” criminal sexual penetration of a child thirteen to eighteen by a person in a position of authority who is able to exercise undue influence is now a first degree felony if the crime results in great bodily harm or great mental anguish to the victim. If there is not great bodily harm or great mental anguish to the victim, it is a “second degree felony for a sexual offense against a child.” (Under the existing statute, criminal sexual penetration is always a first degree felony when committed on a child younger than thirteen.)

Amendment of criminal sexual contact of a minor (NMSA 1978, Section 30-9-13):

HB43 amends second, third and fourth degree criminal sexual contact of a minor.

- HB43 amends second degree criminal sexual contact of a minor thirteen to eighteen years of age. Under HB43, the crime applies to all sexual contact of the unclothed intimate parts of a minor thirteen to eighteen when the perpetrator uses force or coercion, or when the perpetrator is armed with a deadly weapon. HB43 removes now redundant language requiring the perpetrator to be in a position of authority over the child and using that authority to coerce the child. HB43 also removes language that would require that in addition to using force or coercion, the perpetrator cause personal injury to the child, or be aided and abetted in the crime.
- HB43 makes similar amendments to third degree criminal sexual contact of a minor thirteen to eighteen years of age, which will now apply to all criminal sexual contact of a minor thirteen to eighteen years of age when the perpetrator uses force or coercion or is armed with a deadly weapon, and the contact is not to the unclothed intimate parts of the minor.
- HB43 amends fourth degree criminal sexual contact of a minor, making it applicable to all criminal sexual contact not defined in previous sections of the statute “perpetrated on a child thirteen to sixteen years of age when the perpetrator is eighteen years of age or older and at least four years older than the child and not the spouse of the child.” (This matches language in the statute defining fourth degree criminal sexual penetration.) HB43 eliminates language that would define fourth degree criminal sexual contact of a minor to apply to contact perpetrated with force or coercion, or by a perpetrator who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer who is at least eighteen years of age and is at least four years older than the child and not the spouse of the child, who learns while performing services in or for a school that the child is a student in a school.

The effect of the amendments to the criminal sexual contact of a minor statute is to make all criminal sexual contact of a minor thirteen to eighteen years of age a second degree felony if that crime is perpetrated using force or coercion and the contact is to the unclothed intimate parts of the minor. Other criminal sexual contact of a minor thirteen to eighteen is a third degree felony if the crime is perpetrated using force or coercion.

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.

It is not known whether HB43 will increase or decrease costs for the district attorneys. By expanding the definition of some offenses and by increasing the penalties for some offenses, HB43 may result in more trials, or more plea agreements. Costs will increase for corrections if more offenders are incarcerated for longer periods.

SIGNIFICANT ISSUES

As discussed above, the net impact of the amendments is to raise the degree of offense, and/or

expand the definition of the offense, when the crimes of criminal sexual penetration and criminal sexual contact are committed against a victim thirteen to eighteen years of age. To summarize:

- Criminal sexual penetration of a minor thirteen to eighteen years of age when committed by a person in a position of authority moves from a fourth degree felony to a first degree felony if the force or coercion results in great bodily harm or great mental anguish to the victim. It moves to a “second degree felony for a sexual offense against a child” if there is no great bodily harm or great mental anguish to the victim.
- Criminal sexual contact of a minor thirteen to eighteen years of age remains a second degree felony for a sexual offense against a child when it committed by a person in position of authority over the child. However, other types of force or coercion no longer require a showing of personal injury, or that the perpetrator was aided and abetted by another person.
- The third degree felony for a sexual offense against a child for criminal sexual contact of a minor thirteen to eighteen years of age no longer requires a showing of personal injury to the child, or aiding or abetting.
- Fourth degree criminal sexual contact of a minor now has language matching the language in the criminal sexual penetration statute, applying when the crime is perpetrated on a child thirteen to sixteen years when the perpetrator is eighteen years of age or older and at least four years older than the child and not the spouse of the child.

PERFORMANCE IMPLICATIONS

HB43 applies a very different and more expansive definition of force or coercion by a person in a position of authority. It will apply to a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child. This will replace current provisions that apply when the perpetrator is a certain type of school employee or volunteer at least eighteen years of age and at least four years older than the child and not the spouse of the child, who learns while performing services in or for a school that the child is a student in a school. (The current statute contains, and will continue to contain, provisions defining force or coercion to include the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his or her patient, with “psychotherapist” defined to include licensed social workers, counselors, religious functionaries acting as pastoral counselors, and others.)

Under the new definition, the state will need to prove that the person is able to exercise undue influence by reason of the position the person holds. That is a more difficult burden than the burden in the existing statute, which assumes undue influence from the type of school position held. However, the existing definition is extremely restricted, limited to certain school employees and volunteers, requiring an age difference, and requiring a showing that the perpetrator learns, while performing services in or for a school, that the child is a student in a school

ADMINISTRATIVE IMPLICATIONS

New jury instructions will be required to reflect the new statutory descriptions of the offenses.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

A spouse of a minor is a “household member,” and likely exercises undue influence over the minor. Under a strict reading of HB43, it would criminalize consensual sexual contact between a husband and wife if one is under eighteen.

Amending the definition of “position of authority” to exclude the spouse of a child would remove that problem. Other forms of “force or coercion” would still apply. Sexual crimes perpetrated by physical force or threats, or committed against an unconscious or helpless victim would still be illegal, even if committed by a spouse.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

New Mexico’s criminal statutes will continue to have a very limited recognition of the use of force or coercion by persons in a position of authority in sexual crimes against children. Sexual crimes against children committed by persons in positions of authority will continue to have low penalties.

AMENDMENTS

Amend Section 1, page 3, lines 12-15, as follows:

E. “position of authority” means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child, but excludes the spouse of that child.