

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:
Original **Amendment**
Correction **Substitute**

Date 1-25-17
Bill No: SB160

Sponsor: Candace Gould
Short Title: Enticement of Children Penalties

Agency Code: 264
Person Writing: Gail MacQuesten
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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	Minimal	Minimal	Minimal	Minimal	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB43
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB160 amends NMSA 1978, Section 30-9-1, Enticement of Child, to expand the reach of the statute and increase the penalties.

Section 30-9-1 prohibits enticing, persuading or attempting to persuade a child to enter any vehicle, building, room or secluded place with intent to commit an act that would be a crime under Article 9 of the Criminal Code, or having possession of a child in any vehicle, building room or secluded place with intent to commit such a crime. Article 9 includes sexual offenses including prostitution, criminal sexual penetration, criminal sexual contact of a minor, and indecent exposure.

Currently, the statute applies only to victims under sixteen; SB160 would expand the statute to apply to victims under eighteen.

Currently, the crime is a misdemeanor. SB160 makes the crime a fourth degree felony if the child is at least 13 but under 18, or a third degree felony if the child is under 13.

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.

Because SB160 expands the scope of the crime and increases the penalties, it will increase costs for the district attorneys, public defenders, courts and the corrections department.

SIGNIFICANT ISSUES

SB160 expands the scope of the crime of enticement to a child and increases the penalties.

In some cases, the enticement or attempted enticement of the child will carry a penalty equal to or greater than the penalty for the sexual offense the defendant intended to commit by enticing the child. For example, if a defendant entices a child into a secluded space in order to expose

him or herself to the child, the enticement itself would be a fourth degree felony if the child was 13-18, or a third degree felony if the child was under 13. Aggravated indecent exposure (indecent exposure when the victim is under 18) is a fourth degree felony. See NMSA 1978, Section 30-9-3.

The sexual offenses in Article 9 are generally felonies when the victim is a child. New Mexico has a separate statute defining and punishing attempts to commit felonies. See NMSA 1978, Section 30-28-1. An attempt consists of an overt act in furtherance of and with intent to commit a felony and tending but failing to effect its commission. (A defendant cannot be convicted under Section 30-28-1 for attempt and convicted of the underlying felony.) The enticement statute is similar to an attempt statute: it punishes specific overt acts taken with the intent to commit one of the felonies described in Article 9. It differs from the attempt statute in that a defendant can be convicted both of enticement and of the underlying felony. Interestingly, the enticement statute has “attempt” built into it: it punishes an attempt to entice a child. When enticement was a misdemeanor, this posed no conflict with the attempt statute, because the attempt statute only applies to attempts to commit felonies. Now, under SB160, an attempt to commit enticement is itself a felony. Conceivably, it would be possible to charge and convict someone of attempt under Section 30-28-1 for an attempt to commit an attempted enticement: an attempted attempt. The issue will be whether the legislature intended two crimes.

It is possible that if a defendant enticed a child, but did not complete the intended sexual offense, that the defendant could argue that he or she should be charged under the attempt statute, and not the enticement statute. (The attempt statute might impose a lower penalty, because attempt typically carries a penalty one degree lower than the completed crime. The enticement statute has defined penalties that may be equal to or even greater than the penalty of the intended sexual offense.)

PERFORMANCE IMPLICATIONS

See Significant Issues, above.

ADMINISTRATIVE IMPLICATIONS

SB160 will require new jury instructions.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB43 proposes amendments to NMSA 1978, Section 30-9-10 *et seq.*, defining the sexual offenses to which the enticement statute applies.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None noted.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The enticement statute will not apply to victims sixteen and over, and will remain a misdemeanor.

AMENDMENTS

None proposed.