

<b>LFC Requester:</b>	
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**AGENCY BILL ANALYSIS  
2018 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

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*{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 Jan. 20, 2018  
**Original**     **Amendment**        **Bill No:** SB96  
**Correction**     **Substitute**   

**Sponsor:** Gregory A. Baca    **Agency Code:** 264  
**Short**    Penalties for Crimes    **Person Writing**    Gail MacQuesten  
**Title:**    Against Children    **Phone:** 505 466-0532    **Email** gailmacquesten@gmail.com

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY18</b>	<b>FY19</b>	<b>FY20</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	minimal	minimal	minimal	recurring	general

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB100  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

SB96 amends three New Mexico statutes addressing crimes against children:

- Abandonment or Abuse of a Child, NMSA 1978, Section 30-6-1
- Enticement of Child, NMSA 1978, Section 30-9-1
- Criminal Sexual Communication with a Child, NMSA 1978, Section 30-37-3.3

Abandonment of Abuse of a Child

SB96 raises the penalties for intentional abuse that does not result in death or great bodily harm. Currently abuse (whether negligent or intentional) that does not result in death or great bodily harm is a third degree felony for a first offense, and a second degree felony for a subsequent offense. SB96 provides for increased penalties for intentional abuse that does not result in death or great bodily harm to a second degree felony for a first offense, and a first degree felony for a subsequent offense. SB96 does not change the penalties for abuse that results in great bodily harm: whether the offense is negligent or intentional, it is a first degree felony.

SB96 raises the penalty for intentional abuse that results in the death of the child, removing the age distinction in the current statute that provides a lower penalty if the child is twelve or over. Under SB96, intentional abuse that results in the death of the child is a “first degree felony resulting in the death of the child.”

SB96 also changes “hospital” to “safe haven site” in the provision stating that a person who leaves an infant no more than ninety days old at such a site may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the site. This brings the language into conformity with the Safe Haven for Infants Act.

Enticement of a Child

SB96 amends Enticement of a Child so that the offense applies when the child victim is under the age of eighteen. (As currently written, the statute only applies when the child is under sixteen.)

SB96 also raises the penalties for the offense. Currently, the offense is a misdemeanor.

Under SB96 it is a fourth degree felony if the child is at least thirteen but under eighteen, and a third degree felony if the child is under thirteen.

### Criminal Sexual Communication with a Child

SB96 changes the language in the definition of the offense. Currently, the statute prohibits knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child. (Emphasis added.) SB96 broadens the scope of the offense by changing the two underlined words, so the statute will prohibit providing images of any person's intimate parts.

## **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.

Fiscal implications for the district attorneys are unknown. Higher potential penalties may result in more cases going to trial, or may result in more plea agreements. Because SB96 expands the scope of the statutes defining enticement of a child and criminal sexual communication with a child, the district attorneys may see an increased caseload, resulting in additional costs.

To the extent SB96 results in increased incarceration, there will be increased costs to the state.

## **SIGNIFICANT ISSUES**

SB96 increases penalties and clarifies New Mexico's statutes regarding crimes against children.

### Abandonment or Abuse of a Child

1. SB96 increases the penalties for intentional child abuse that does not result in death.

Currently, abuse (whether intentional or negligent) that does not result in death or great bodily harm is a third degree felony for a first offense (three years) and a second degree felony for a subsequent offense (nine years). SB96 makes intentional abuse that does not result in death or great bodily harm a second degree felony for a first offense (nine years) and a first degree felony (eighteen years) for a subsequent offense.

2. SB96 makes all intentional child abuse that results in death a "first degree felony resulting in the death of a child," which carries a life sentence.

The statutory provision currently makes a distinction based on the age of the victim. If the victim is a child twelve to eighteen years of age the crime is a "first degree felony," which carries a basic sentence of eighteen years. If the child is under twelve, the crime is a "first degree felony resulting in the death of a child," which carries a basic sentence of life imprisonment. SB96 removes the age distinction, so that intentional child abuse that results in the death of the child is a "first degree felony resulting in the death of a child," subject to life imprisonment.

3. SB96 changes “hospital” to “safe haven site.”

HB96’s use of the term “safe haven site” in place of “hospital” brings the statute into conformance with the language used in the Safe Haven for Infants Act, which defines “safe haven” as a hospital, law enforcement agency or fire station that has staff on-site at the time an infant is left at the site. NMSA 1978, Section 24-22-2(F).

Enticement of a Child.

1. Enticement of a Child consists of enticing, persuading or attempting to persuade a child to enter a vehicle, building, room or secluded place with intent to commit a sexual offense, or having possession of a child in one of those places with intent to commit a sexual offense. Currently, the statute only applies if the child is under sixteen. SB96 expands the statute so it applies if the child is under eighteen.

2. Currently, the crime of enticing a child is a misdemeanor, with a potential sentence of up to one year. SB96 makes the crime a fourth degree felony (eighteen months) if the child is at least thirteen, and a third degree felony (three years) if the child is under thirteen.

Criminal Sexual Communication with a Child.

SB96 clarifies and broadens the scope of Section 30-37-3.3.

1. Currently, the statute provides that communication can occur by “sending” obscene images by means of an electronic communication device. This leaves room for arguing that handing a child a cell phone showing an obscene image is not a crime or showing a child obscene images on a computer is not a crime – the crime only occurs when the image is sent electronically. A defendant made that argument successfully before the court of appeals; the New Mexico supreme court, however, reversed the court of appeals and held that statute applied when the defendant handed his cell phone to a child. *State v. Tufts*, 2016-NMSC-20. SB96 uses language consistent with the holding in opinion, changing “sending” to “providing.”

2. Currently, a person commits this crime by sending obscene images of “the person’s” intimate parts. Sending obscene images of another person’s intimate parts, arguably, would not be a crime. SB96 changes “the person’s” to “any person’s.”

**PERFORMANCE IMPLICATIONS**

As discussed above, increasing the penalty for the offense may result in more cases going to trial, or may result in more cases being resolved by plea bargains. Expanding the scope of the statutes may result in additional cases.

**ADMINISTRATIVE IMPLICATIONS**

See “Performance Implications,” above. New Jury instructions will be needed to reflect statutory changes in the definitions of the crimes.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB100 also amends Section 30-6-1 to remove the age distinction in the provision defining intentional abuse of a child that results in the death of the child, and to use the term “safe haven site,” but makes no other changes.

#### **TECHNICAL ISSUES**

None noted.

#### **OTHER SUBSTANTIVE ISSUES**

None noted.

#### **ALTERNATIVES**

None proposed.

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Intentional and negligent child abuse that does not result in death or great bodily harm will carry the same punishment. Intentional child abuse that results in death to a child twelve to eighteen will carry lower penalties than the same offense committed on a younger victim. Enticement of a child will not be a crime if the victim is sixteen or older, and will only be punishable as a misdemeanor. Criminal sexual communication with a child will not be a crime unless the obscene image is of the person communicating with the child; the litigated language regarding “sending” an image will remain in the statute.

#### **AMENDMENTS**

None proposed.