

LFC Requester:	Kelly Klundt
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**AGENCY BILL ANALYSIS
2016 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 1/19/16
Original **Amendment** _____ **Bill No:** HB 121
Correction _____ **Substitute** _____

Sponsor: Sharon Clahchischilliage **Agency Code:** 305
Short Criminal Sexual Offense **Person Writing** Bridget Mullins
Title: Definitions **Phone:** 222-9018 **Email** bmullins@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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

This Bill proposes an amendment to the definitions section of NMSA 1978, §30-9-10 relating to sexual offenses. The Bill adds one section to the definition of force or coercion stating that force or coercion would also consist of “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.”

The Bill then eliminates a portion of the definitions statute under §30-9-11(G) that talks about criminal sexual penetration in the fourth degree. The eliminated portion of the statute defines criminal sexual penetration in the fourth degree as 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”.

This bill essentially heightens the penalty for a criminal sexual penetration of a child by a person in position of authority, broadens when this crime can be charged by eliminating the list of people in authority positions, and requires that the state show undue influence over the child.

Position of authority is already defined in the existing 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”.

The Bill also makes a few grammatical changes to the existing statutes.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

The effect of this Bill would be to make criminal sexual penetration on a child thirteen to eighteen years of age a second degree felony when the perpetrator is “in a position of authority” under §30-9-11(E) and exerts undue influence over the child.

However, under the proposed bill, if the position in question was, for example something like a “school volunteer,” the State will have to prove that due to the perpetrator being in the

position of school volunteer they were able to exert undue influence over the child. It would not be a crime merely because of the position of the volunteer at the school. A consent defense would be available to the defendant. "Undue influence" is not defined in §30-9-10.

Because the only time that the word school is used in the existing statute is in §30-9-11(G)(2) (which is being eliminated under this Bill), that definition could be eliminated from the existing statute as unnecessary.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The status quo. Perpetrators defined in Section G of the existing statute could be charged with a fourth degree felony offense.

AMENDMENTS