

LFC Requester:	Julia Downs
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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** January 27, 2016
Original **Amendment** _____ **Bill No:** HB 236
Correction **Substitute** _____

Sponsor: Antonio "Mo" Maestas **Agency Code:** 305
Short Title: Penalty for Sexual Exploitation of Children **Person Writing:** Tony Long, AAG
Title: _____ **Phone:** 505/222-9020 **Email:** tlong@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 analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis: This bill changes one word in 30-6A-3(A). The one word change is in the penalty section of the statute. It changes the penalty for possession of child pornography from a fourth degree felony to a second degree felony.

FISCAL IMPLICATIONS

SIGNIFICANT ISSUES

The bill changes Sexual Exploitation of Children by Possession from a fourth degree felony to a second degree felony, however it remains silent on Sexual Exploitation of Children by Distribution which remains a third degree felony. This disparity could be considered confusing because Sexual Exploitation of Children by Possession, Manufacture, and Production (Child Under 13) are all in the second degree felonies but Sexual Exploitation of Children by Distribution and Production (Child 13 and Over) remain in the third degree.

The bill remains silent on the unit of prosecution which was the seminal issue in the *Ballard/Olsson* Supreme Court decision. In that case, the Supreme Court of New Mexico specifically requested that the legislature clarify what the unit of prosecution is. As drafted, this bill does not appear to comply with a very specific request from the New Mexico Supreme Court.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Conflict – HB 65
Relationship – HB 65

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

N/A