

LFC Requester:	Kelly Klundt
-----------------------	---------------------

**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 1/28/16
Original **Amendment** **Bill No:** HB 266
Correction **Substitute**

Sponsor: Rep. Christine Trujillo **Agency Code:** 305
Short Title: Suspension of Parental Rights for Sex Crimes **Person Writing:** Yvonne Chicoine, AAG
Phone: 505/827-6928 **Email:** ychicoine@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: HB50
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:

HB 266 creates a new statutory section allowing a district court to grant a custodial parent’s motion for permanent suspension of the parental rights of the person who caused the child’s conception through criminal sexual penetration or criminal sexual contact. The legislation names this person the respondent.

Section A sets out the conditions under which the court may grant the motion:

- if the motion is brought within two years of the child’s birth, the court may grant the motion only if it finds clear and convincing evidence the child was conceived as a result of the respondent’s criminal conduct,
- if the motion is brought between two and six years after the child’s birth, the court may grant the motion only if it finds the respondent was convicted of criminal sexual penetration or criminal sexual contact with respect to the conduct giving rise to the child’s conception,
- if the motion is brought more than six years from the date of the child’s birth, the court cannot grant the motion under the terms of the new section.

Section B sets forth six requirements for a motion brought under the section:

1. the current relationship between the custodial parent and the respondent,
2. the facts and circumstances of the child’s conception,
3. the date and place of the child’s birth,
4. the respondent’s name and address, if known,
5. the name and address of the person or persons who would have legal and physical custody of the child upon permanent suspension of the respondent’s parental rights, and
6. whether the child and proceedings are subject to the federal Indian Child Welfare Act, and if so (a) the tribal affiliations of the child’s biological parents, (b) details regarding the actions taken by the custodial parent, notify the child’s biological parents’ tribes including copies of correspondence, and (c) efforts taken to comply with the placement preferences set forth in the federal Indian Child Welfare Act of 1978 or the placement preferences of the appropriate Indian tribes.

Section C sets for the requirements for service of the custodial parent’s motion.

Section D requires the custodial parent to request a hearing at the time the motion is filed.

The court must schedule the hearing to occur between thirty and sixty days of the filing of the motion.

Section E requires the court to advise the custodial parent and the respondent of the right to counsel and provides that indigent parties who want counsel are entitled to counsel appointed from the children, youth and families department.

Section F allows the court to appoint a guardian ad litem for the child if it finds “significant cause.” The court must make a record of its reasons. Parties and their representatives may not be appointed guardian ad litem.

Section G relates to children who are subject to the federal Indian Child Welfare Act of 1978 where the motion is filed within six years of the child’s birth.

Section H sets forth what the court must include in any order permanently suspending parental rights: (1) the respondent has no rights to legal or physical custody of or visitation with the child, (2) the respondent has no right to consent to or receive notice of an adoption proceeding concerning the child, (3) the order does not preclude the custodial parent, the child or the state from seeking child support for the child, (4) the order does not affect the child’s right of inheritance from and through the respondent, (5) the respondent has no right of inheritance from the child, and (6) the identity of the person retaining custody of the child.

Section I contains the definitions of five terms: (1) “criminal sexual contact,” “criminal sexual penetration,” “custodial parent,” “parental rights” and “respondent.”

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.

SIGNIFICANT ISSUES

HB 266 contains no indication of the Chapter of the New Mexico Code in which it should be placed. Nor does it contain any indication as to whether, or the extent to which, existing law and practice governing child custody proceedings apply.

HB 266 does not define “permanent suspension” of parental rights, giving rise to a question as to how “permanent suspension” compares to termination of parental rights. Because HB 266 does not reference termination of parental rights, it must be presumed that the victim of a rape who conceives a child does not have the right to seek termination of the rights of the abusing parent, only permanent suspension.

Chapter 40, article 13 provides for orders of protection for victims of “domestic abuse,” which is defined as “an incident of stalking or sexual assault whether committed by a household member or not.” Rather than making the provisions of HB 266 applicable only in cases of criminal sexual penetration and criminal sexual contact, it might be more inclusive to make HB 266 applicable to cases where conception resulted from an instance of “domestic abuse.”

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS