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| LFC Requester: | Ellen Rabin |
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**AGENCY BILL ANALYSIS
2023 REGULAR SESSION**

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 Jan 20, 2023
Bill No: HB 128

Sponsor: Rep. S. Lord
Short Title: CHEMICAL CASTRATION
OF SOME SEX OFFENDERS

Agency Name and Code 305–Office of the Attorney General
Number: _____
Person Writing AAG Ashley A. Schweizer
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY23 | FY24 | | |
| | | | |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY23 | FY24 | FY25 | | |
| | | | | |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY23 | FY24 | FY25 | 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

This analysis is neither a formal Attorney General Opinion nor an Attorney General Advisory Letter. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the Office of the Attorney General.

BILL SUMMARY

Synopsis:

This bill requires that sex offenders convicted of any provision of Criminal Sexual Penetration (NMSA 30-9-11) or any provision of Criminal Sexual Contact of a Minor (NMSA 30-9-13) must undergo chemical castration, which is the implementation of drugs labeled as “antihormones” that typically affect hormones. At this time, at least nine US states have laws authorizing chemical castration.

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 128 will be subject to scrutiny under the 8th amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. (Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted, U.S. Const. amend. VIII). The New Mexico Constitution includes the same restriction. See N.M. Const. art. II, § 13.

The New Mexico Supreme Court has held that the state constitution's prohibition against cruel and unusual punishment affords greater protection than its federal counterpart. (“Article II, Section 13, prohibiting cruel and unusual punishment, have been interpreted as providing greater protection than their federal counterparts. *See State v. Vallejos*, 1997–NMSC–040, ¶¶ 35–38, *State v. Rueda*, 1999–NMCA–033, ¶¶ 9–14,” cited by *Montoya v. Ulibarri*, 2007–NMSC–035, ¶ 22.). While chemical castration has withstood challenges in other states, it is unclear how courts in New Mexico would decide if the law was litigated.

Many of the crimes codified in Sections 30-9-11 and -13 do not have mandatory incarceration terms, so there would not necessarily be a parole term for violations of these sections. Because many of the provisions in both the Criminal Sexual Penetration and the Criminal Sexual Contact of a Minor do not carry mandatory incarceration, it is unclear what the legislative intent is for violations of these two provisions that do not result in incarceration, and therefore a sentence to parole.

PERFORMANCE IMPLICATIONS

None

ADMINISTRATIVE IMPLICATIONS

The Office of the Attorney General is responsible for representing the state in all criminal appeals. Enactment of HB 128 may result in additional appeals or more complex appeals and would require additional resources from the Office of the Attorney General's

Criminal Appeals Division.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None found.

TECHNICAL ISSUES

Another issue is that a sex offender parole term is indeterminate, per NMSA 31-21-10.1. An initial 5 year period of sex offender parole is served, and then the board conducts a review, and continues to conduct review hearings at 2 ½ year increments.

This conflicts with subsection B of this bill: “until the Court determines the treatment is no longer necessary.” If a person is on sex offender parole supervision, the Parole Board is responsible for the parolee’s compliance with parole conditions, not the court.

Sex offenders may have concurrent supervision with probation and parole, but they operate independently. See NMSA 31-20-5.2. An offender may be released from probation supervision and required to stay on parole supervision, and vice versa.

If chemical castration is a condition of sex offender parole, it would be monitored and enforced by the parole board. If it is a condition of sex offender probation, it is enforced by the Court.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

N/A