

LFC Requester:	Connor Jorgensen
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**AGENCY BILL ANALYSIS
2013 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:

Original X **Amendment**
Correction **Substitute**

Date 01/25/2013
Bill No: HB206--305

Sponsor: Rep. Cathrynn N. Brown
Short ABORTION AS EVIDENCE
Title: TAMPERING IN SOME CASES

Reviewing Attorney General's Office
Person Writing Trevor A. Rigler, AAG
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SECTION II: FISCAL IMPACT **FOR LFC OFFICIAL PURPOSES******
AGO STAFF SHOULD LEAVE SHAGED AREAS BLANK

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY13	FY14		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:

Duplicates/Relates to Appropriation in the General Appropriation Act

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates, Relates to, Conflicts with, Companion to

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Opinion Letter. This is a staff analysis in response to the agency’s committee’s or legislator’s request.

BILL SUMMARY

Summary Synopsis:

HB 206, if enacted into law, would create a new variant of the criminal offense of tampering with evidence. Specifically, procuring, facilitating, or compelling another to obtain an abortion to destroy evidence of criminal sexual penetration or incest would be criminalized.

FISCAL IMPLICATIONS WITH ENACTING THIS BILL

Because the bill creates a new variant of a criminal offense, it could result in additional criminal matters filed in courts of jurisdiction. The successful prosecution of criminal matters brought pursuant to this bill would likely require professional witness testimony. The bill could also result in additional criminal investigations into allegations of abortions as well as additional investigative tasks (for example, compliance with the privacy provisions of the Health Insurance Portability and Accountability Act).

SIGNIFICANT LEGAL ISSUES

As drafted, the bill seems overly broad relative to the act it intends to criminalize. An abortion does not necessarily conceal the act of an underlying criminal sexual penetration or incest. Forensic evidence can be taken from aborted fetal remains.

The existing statute criminalizing tampering with evidence could already be applied to a factual scenario contemplated in the bill.

The bill, as written, states that tampering with evidence “*shall include* procuring or facilitating an abortion, or compelling or coercing another to obtain an abortion...” [emphasis added]. Typically, when a criminal statute intends to criminalize conduct, it uses the phrases “consists of” or “may include”. The language of the present bill could later be held to invalidate the law as it could usurp the role of the finder of fact in a trial.

PERFORMANCE IMPLICATIONS WITH ENACTING THIS BILL

None

ADMINISTRATIVE IMPLICATIONS WITH ENACTING THIS BILL

None

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP WITH BILLS INTRODUCED THIS SESSION

SB 46 & SB 74 - "SEXUAL ASSAULT PREVENTION & SERVICES" (Linda M. Lopez), which would fund sexual assault prevention and sexual assault services and training.

HB 38 - "REMOVE RIGHTS FROM CERTAIN RAPE CONVICTIONS" (Alonzo Baldonado), which would amend §30-9-11 NMSA (Criminal Sexual Penetration) in two ways. First, it would impose a bar on custody, visitation, and inheritance to those convicted of criminal sexual penetration when the child is a product of the underlying act of criminal sexual penetration. Second, it would impose a stay on any paternity proceeding where a person seeking paternity rights is subject to a pending charge of criminal sexual penetration.

HB 39 - "CONSENT REQUIREMENTS FOR CERTAIN ADOPTIONS" (Alonzo Baldonado), which would clarify existing law that the consent of a father of a child conceived by criminal sexual penetration is not required to complete an adoption.

TECHNICAL ISSUES OR DRAFTING ERROR

None

OTHER SUBSTANTIVE LEGAL ISSUES

The bill could create unintended consequences.

First, it could criminalize the conduct of a victim of a sex crime which would ordinarily not violate the law. In other words, it could be interpreted by rape victims and their supporters as a bar on all legal abortions.

Second, it could stymie efforts of law enforcement to investigate sex crimes. Victims of sex crimes and their supporters could erroneously believe that they have a choice between having an abortion and cooperating with law enforcement.

Finally, because the crime of tampering with evidence is typically applied to common street crimes (for example, throwing a rock of crack cocaine under a bush to avoid detection) as often (if not more often) as it is applied to violent crimes (for example, destroying clothing worn by a murder suspect), it could trivialize the underlying crime of criminal sexual penetration or incest.

ALTERNATIVES TO ENACTING THIS BILL

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS NEEDED TO IMPROVE THIS BILL

Remove language providing punishment to victim of underlying crime of criminal sexual penetration or incest.