

<b>LFC Requester:</b>	<b>Connor Jorgensen</b>
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**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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:*

<b>Original</b>	<input checked="" type="checkbox"/>	<b>Amendment</b>	<input checked="" type="checkbox"/>	<b>Date</b>	<u>2/13/2015</u>
<b>Correction</b>	<input type="checkbox"/>	<b>Substitute</b>	<input type="checkbox"/>	<b>Bill No:</b>	<u>HB 387</u>

<b>Sponsor:</b>	<u>Rep. Conrad James</u>	<b>Agency Code:</b>	<u>Attorney General's Office</u>
<b>Short Title:</b>	<u>No Parental Rights for Certain Crimes</u>	<b>Person Writing</b>	<u>James Torres, AAG</u>
		<b>Phone:</b>	<u>827-6064</u>
		<b>Email</b>	<u>jtorres@nmag.gov</u>

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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’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.

**BILL SUMMARY**

**Synopsis:**

HB 387 creates legislation relating to the termination of parental rights under certain circumstances stemming from conception of a child as a result of criminal sexual penetration. Under this proposed section, a victim (“a woman who became pregnant as a result of criminal sexual penetration”) may file a motion to terminate a respondent’s (“biological father”) parental rights or permanently suspend the respondent’s legal and physical custody and visitation rights. This motion may only be filed by the victim and it must be filed within 6 years from the date the victim knew or should have known her pregnancy resulted from criminal sexual penetration.

After the victim requests a hearing on the motion and serves proper notice, a court must make the following findings, based on clear and convincing evidence, to alter the respondent’s parental rights:

1. The child was conceived as a result of criminal sexual penetration  
AND
2. Applicable alteration of parental rights is necessary to protect the physical, mental, and emotional welfare of the *victim*.

If the court decides to *permanently suspend* OR *terminate* respondent’s legal and physical custody and visitation rights pursuant to this section, the respondent will have no rights to legal or physical custody of or visitation with the child; the respondent will have no right to consent to or receive notice of a subsequent adoption; the respondent has no right of inheritance from the child. With regard to *permanent suspension*, the victim, child or state may seek child support from respondent; a child will maintain inheritance rights from respondent. With regard to *termination*, the respondent will lose all legal rights and privileges with respect to the child; no party may seek child support from respondent.

Specific rules are promulgated in accordance with the Indian Child Welfare Act of 1978.

Section 32A-5-19 is amended to provide that consent to adoption or relinquishment of parental rights shall not be required from a biological parent convicted of criminal sexual penetration *and* when the parent’s rights have been terminated or permanently suspended pursuant to the provisions of Section 1 of HB 387.

## **FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

With respect to amendments proposed to Section 32A-5-19, Subsection (D) is ambiguous as to whether *both* a conviction of criminal sexual penetration and termination/permanent suspension under proposed Section 1 of this bill are required to trigger Section 32A-5-19, or whether one or the other would independently trigger this section. If the former is true, a conviction of criminal sexual penetration would no longer be sufficient to remove the custody rights of a biological father during adoption proceedings. A victim would have to be put through the additional proceeding created by HB 387, being forced to relive her trauma in order to secure adoption of her child.

With respect to proposed Section 1, it is important to understand that *only* a victim who became pregnant as a result of criminal sexual penetration is afforded standing to bring a claim under this section. Further, proposed Subsection (C) requires a showing that removal of the biological father's rights are *necessary* to protect the physical, mental, *and* emotional welfare of the victim. Absent a showing of all three of these conditions, the biological father of a child conceived by his criminal sexual penetration will not be deprived parental rights. Significantly, this Section does not take into account the welfare of the child.

It is also important to note that, because standing is limited to the victim, this bill does not account for the possibility of a victim having no contact with the child. In this circumstance, neither a child nor that child's custodians would be protected under this section.

Finally, there is some concern relating to the standard of proof required during a proceeding pursuant to this proposed section. The burden for determining whether criminal sexual penetration occurred is one of clear and convincing evidence, meaning the trier of fact believes that it is substantially more likely than not, or approximately 75 percent likely, that the accused had committed the offense. Requiring only a showing of clear and convincing evidence, as opposed to a conviction based on proof beyond a reasonable doubt, may have the unintended consequence of spurring false accusations during custody proceedings.

## **PERFORMANCE IMPLICATIONS**

N/A

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

## **TECHNICAL ISSUES**

**Addressed above**

## **OTHER SUBSTANTIVE ISSUES**

N/A

## **ALTERNATIVES**

N/A

## WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

### AMENDMENTS

1. Depending on the legislative intent behind proposed Subsection 32A-5-19(D), drafters may consider the following amendment:

D. a biological parent of an adoptee conceived as a result of criminal sexual penetration as defined in Section 30-9-11 NMSA 1978 when the parent has been convicted of criminal sexual penetration ~~and when the parent's rights have been terminated or permanently suspended pursuant to this 2015 act;~~

E. a biological parent of an adoptee when the parent's rights have been terminated or permanently suspended pursuant to this 2015 act;

2. Proposed amendment to Section 1 (B)-(C)

~~B. In a proceeding pursuant to this section, the court shall find whether the child was conceived as a result of criminal sexual penetration.~~

C. If the respondent has been convicted of criminal sexual penetration, court finds that the child was conceived as a result of criminal sexual penetration, and the child was conceived as a result of that offense, the court shall terminate or permanently suspend legal and physical custody and visitation rights of the respondent with respect to the child if, having considered the relationship between the child's biological parents and the circumstances of the child conception, the court finds that termination of parental rights or permanent suspension of legal and physical custody and visitation rights is necessary to protect the physical, mental and emotional welfare of the victim.