

LFC Requester:	Chenier, Eric
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**AGENCY BILL ANALYSIS
2015 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 **Amendment**
Correction **Substitute**

Date January 14, 2015
Bill No: SB 83-305

Sponsor: Se. Jacob R. Candelaria
Short Title: Criminal Sentencing Act
Technical Corrections

Agency Code: Attorney General's Office
Person Writing: Jennifer Armijo Hughes
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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)

	FY15	FY16	FY17	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’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: Senate Bill 83 amends Section 31-18-25 NMSA 1978 by making minor technical changes to Subsections D and F.

Subsection D is amended to read “the defendant” rather than “he”.

Subsection F (1) is amended to refer to Subsection D of Section 30-9-11 NMSA 1978 rather than C, which is the correct and current location of criminal sexual penetration in the first degree.

Subsection F (2) is amended to refer to Subsection E of Section 30-9-11 NMSA 1978 rather than D, which is the correct and current location of criminal sexual penetration in the second degree.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The 2007 legislative reorganization of Section 30-90-11 moved the definition of criminal sexual penetration in the second degree to Subsection E and the definition of criminal sexual penetration in the first degree to Subsection D. In what appears to be a legislative oversight, the same 2007 reorganization did not make a corresponding change in Section 31-18-25 (F) to substitute Subsection E of Section 30-90-11 for Subsection D and to substitute Subsection D of Section 30-90-11 for C.

The reorganization became a source of confusion in *State of New Mexico ex rel. Brandenburg v. Sanchez*, 34,453 (N.M. 2014). The defendant was convicted of CSP in the second degree and the State sought to impose a mandatory life sentence, pursuant to Section 31-18-25, because it was the defendant’s second violent sexual offense. The District Court concluded that the mandatory life sentence enhancement did not apply, finding a “legislative infirmity” in the statutes. The State appealed and the NM Supreme Court granted the emergency petition for writ of superintending control.

In Justice Bosson’s Opinion he stated, “While Section 31-18-25 (F) is not as clear as it could be because the reader has to reconcile the discrepancy in the reference to Subsections C and D of

Section 30-90-11, there is no indication that the Legislature intended to repeal the mandatory life sentence for a second conviction of second degree CSP.” He went on to say,” We do, however, invite the Legislature to address this statutory anomaly to clarify what is essentially a clerical error.”

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Without this bill, Subsection D of Section 31-18-25 NMSA 1978 will refer to the defendant as a “he” rather than as “the defendant”.

Without this bill, Subsection F will refer to the incorrect subsections of 30-9-11 NMSA 1978 and is likely to cause further confusion during sentencing proceedings.

AMENDMENTS

N/A