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FISCAL IMPACT REPORT

SPONSOR <u>Hochman-Vigil</u>	LAST UPDATED <u>03/20/2025</u>	ORIGINAL DATE <u>01/29/2025</u>
SHORT TITLE <u>Non-Consensual Touching Clarification</u>	BILL NUMBER <u>87/aHJC/aSJC</u>	ANALYST <u>Chilton</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
LOPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
AOC	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
NMCD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
DPS	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 73

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Law Offices of Public Defender (LOPD)
 Administrative Office of the Courts (AOC)
 New Mexico Sentencing Commission (NMSC)
 Health Care authority (HCA)
 Department of Health (DOH)
 Children, Youth and Families Department (CYFD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of SJC Amendment to House Bill 87

The Senate Judiciary Committee amendment to House Bill 87 strips off a House Judiciary Committee amendment and adds language, thereby redefining criminal sexual contact as the intentional touching with the intent to arouse or satisfy sexual desire or to intrude on the bodily integrity or personal safety of the victim or for any other unlawful purpose, whether the victim is clothed or unclothed.

Synopsis of HJC Amendment to House Bill 87

The House Judiciary Committee amendment to House Bill 87 adds the intent to gratify sexual desire to the definition of criminal sexual contact and removes the exemption of psychotherapists from the act's definitions and consequences.

The amendment also defines “sensitive areas” to mean the breasts, the anus and rectum, and the primary genital areas of both males and females, defined as the mons pubis, penis, testicles, mons veneris, vulva and vagina.

Synopsis of House Bill 87

House Bill 87 (HB87) amends Section 30-9-12 NMSA 1978, which defines criminal sexual contact, by removing the word “unclothed” as referring to intimate parts touched by the perpetrator – in other words, touching or applying force to a body's intimate parts would be criminal sexual contact, whether those intimate parts were clothed or not.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Law Office of the Public Defender (LOPD) expresses concern that the already stretched resources of that office might be required to defend more alleged violators of the redefined criminal sexual contact, including their potential inclusion in the federal Sex Offender Registration and Notification Act (SORNA).

The New Mexico Sentencing Commission notes that, “It is difficult to determine what the effect of passing HB87 would be on the state's prison population, but broadening the scope of conduct included in the definition of criminal sexual contact may lead to more people being incarcerated by the New Mexico Corrections Department.”

Administrative Office of the Courts (AOC) notes:

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions and appeals from convictions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

In addition, the Department of Public Safety (DPS) raises the likelihood that training would be needed by criminal justice and law enforcement agencies to update their knowledge of the new law.

SIGNIFICANT ISSUES

Sexual abuse is more common in New Mexico than in the United States as a whole, as statistics cited by the Department of Health (DOH) indicate. These statistics do not differentiate between “clothed” and “unclothed” sexual violence. DOH indicates that, “Sexual violence can have lasting physical and mental health effects, leading to fear, isolation, low self-esteem, substance abuse, and, in some cases, perpetuation of violence.”

As noted by LOPD, touching a clothed intimate part is already a crime, though it does not result in a SORNA (Sex Offender Registration and Notification Act) referral. LOPD concludes, after discussing the legal distinctions among categories of unlawful touching, that “HB87 might increase penalties in some circumstances, but in other situations, more serious penalties are already available.”

DPS expresses concern that the bill does not address the provisions in the federal Adam Walsh Child Protection and Safety Act (P.L. 109-248) with its mandate for SORNA referral in three tiers of offense severity, resulting in differing duration of a perpetrator’s name being maintained on the federally maintained registry of sex offenders.

AOC notes that:

Section 30-9-12 has not been amended since 1993. Since then, there has been a greater understanding that unwanted sexual contact can occur regardless of how or whether one is dressed. The majority of other states have amended their laws addressing unwanted sexual contact to either 1) not reference dress or 2) specify that clothed vs. unclothed is irrelevant. This amendment would update New Mexico’s definition of “criminal sexual contact” to allow more assaulters to face penalties for unwanted sexual contact and be more consistent with other definitions nationwide.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to House Bill 73, Childhood Sexual Abuse Statute of Limitations.

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