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FISCAL IMPACT REPORT

SPONSOR M Garcia ORIGINAL DATE 1/27/09
LAST UPDATED _____ HB _____
SHORT TITLE Child Abuse Reporting Requirements SB 22
ANALYST Wilson

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	\$0.1	\$0.1	\$0.1		Recurring	General fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Offices of the District Attorneys (AOC)

Children, Youth & Families Department (CYFD)

Corrections Department (CD)

Public Defender Department (PDD)

Sentencing Commission (SC)

SUMMARY

Synopsis of Bill

Senate Bill 22 will require family members within three degrees of consanguinity, or any other person residing in the same household, to report suspected child abuse. It creates fourth- and third-degree criminal penalties for family members who fail to report suspected child abuse or neglect.

FISCAL IMPLICATIONS

The PDD states that this bill will most likely create some additional expense on the courts, public defender, the various investigatory agencies involved and, to a lesser extent, the prisons. It will expose a new group of persons to felony prosecution who will not otherwise likely be prosecuted. It will likely have an appreciable impact on the court system both because it creates a new crime and because the seriousness of that crime requires that prosecutions occur in District Court and --in the case of indigent defendants-- the appointment of counsel at state expense.

Typically, a child abuse prosecution in New Mexico involves charges against one or two adults - usually the child's primary caregivers. Under the new bill, each and every relative of the child-- as well as each and every household member who failed to report any suspicion that the child was abused or neglected will be liable to a felony conviction.

PDD further notes that because prosecutors have practically unlimited discretion in which cases to prosecute and also because "child abuse" as defined in New Mexico is a fairly elastic concept it will be impossible to predict how much this bill will increase the felony caseload of the courts. However, the bill will likely create potential new felony defendants in many, or perhaps most, child abuse cases where the child lived with persons other than his abusers, or had regular contact with relatives other than his abusers.

CD states that additional felony convictions resulting from this bill will increase the CD's costs by leading to minimal to moderate increases to the inmate population and probation and parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the CD's inmate population or probation and parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty, especially since it involves the often unreported crime of child abuse or neglect.

SIGNIFICANT ISSUES

The PDD provided the following:

The bill seems to spring from the recognition that family are often in a position to recognize that a child is being neglected but that, because of divided loyalties, are reluctant to report the circumstances to the authorities.

The bill encourages whistleblowers by making failure to report neglect a felony. One consequence of the way the bill is drafted is that **ONLY** the relative making the report is exempted from prosecution --every other brother, sister, aunt, uncle, grandparent, etcetera who did not **ALSO** make a report is guilty of a felony. Family members who passively rely on others to make a report are penalized the same as relatives who deliberately decline to report.

Given that many families make decisions through consensus and take action --especially action involving contact with authorities-- through family spokespersons, the bill will seem to threaten the possibility of felony prosecution of family members who indirectly cause the neglect to be reported, but do not themselves make a separate report.

Perhaps it should be recognized as a defense to the crime that the abuse or neglect was in fact reported, and the defendant "helped, encouraged or caused" it to be reported.

CYFD provided the following:

New Mexico's designation of mandated reporter is one of the most inclusive in the country.

The proposed amendment in section 32A-4-3 B does not expand that designation, as existing New Mexico law requiring every person who knows or has a reasonable suspicion to report child maltreatment already applies to family members. The bill proposes to create significantly harsher criminal penalties for family members failing to report than for other persons, including professionals such as physicians, law enforcement officers, nurses, teachers or social workers. Under this bill, family members face third or fourth-degree felony charges, while professionals, who can conceivably have additional knowledge or training in the area of recognizing and identifying child maltreatment and are only subject to misdemeanor charges.

The bill also provides a definition of “family member” that includes any person residing in the household as well as persons related within the third degree of consanguinity. This definition is problematic as it has implications for child welfare practice, including the notice requirements for relatives recently created by the newly enacted federal Fostering Connections to Success and Increasing Adoptions Act. The definition of family member applies to persons under the age of eighteen. This will subject children to felony charges.

Over 70 percent of the substantiated child maltreatment in New Mexico is child neglect and often this neglect is related to poverty. As most circumstances involve neglect, requiring family members to report on one another in these circumstances places an onerous burden on them. The factors contributing to failure to report child maltreatment are very complex and include lack of information and understanding about the signs and symptoms of maltreatment and feelings of family betrayal. Harsh criminal penalties for family members have significant ramifications for the children and youth served by CYFD. Typically, in child maltreatment cases, CYFD works extensively with family members so that they may enhance their ability to care for their children. Criminal penalties may either limit those family members available to support the children or may prevent family members from stepping forward as they are fearful of potential criminal penalties.

OTHER SUBSTANTIVE ISSUES

All 50 states have passed some form of a mandatory child abuse and neglect reporting law in order to qualify for funding under the Child Abuse Prevention and Treatment Act. Laws vary from state to state, but a cursory analysis of state statutes (current as of 2004) shows that most states do not require family and household members to report suspected child abuse. Instead, the primary purpose of most state legislation is to ensure that licensed professionals who interact with children are required to report suspicions of abuse and neglect. Additionally, failure to report to suspected abuse is most often penalized by a fine or misdemeanor charge, not with felony charges on the first offense.

CD believes it may be difficult for some family members to really know what child abuse or neglect is, or to have reasonable suspicions that a child is being abused or neglected, especially if they were abused or neglected as a child and view that treatment as normal. Thus, they may not report the abuse or neglect. Some family members may fear being physically abused themselves if they report child abuse or neglect, and thus not report it. It may be difficult to prove that a family member has a “reasonable suspicion” of child abuse or neglect, especially in those families where abuse and neglect have occurred over several generations and is considered “normal.”

The two new crimes may serve to encourage the reporting of child abuse and neglect, which could ultimately lead to less child abuse and neglect at some point in the future. Less child abuse and neglect may lead to less crime in the future, especially those crimes involving domestic violence of a child or adult. Individuals who were abused or neglected as children are probably

ADMINISTRATIVE IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

This bill has the potential to increase case loads to the courts, the PDD, the district attorneys, the CD and CYFD and may require additional resources to handle the increase.

DW/mt