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FISCAL IMPACT REPORT

ORIGINAL DATE 1/20/16

SPONSOR James **LAST UPDATED** _____ **HB** 68

SHORT TITLE Intentional Child Abuse Penalties **SB** _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Indeterminate but will increase costs	Indeterminate but will increase costs	Indeterminate but will increase costs	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB69

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

HB 68 would amend NMSA 1978, Section 30-6-1 to increase penalties for intentional abuse of a child which does not result in death or great bodily harm. Punishment for a first offense would be raised from a third degree felony to a second degree felony, while punishment for a second or subsequent offense would be raised from a second degree felony to a first-degree felony.

The effective date of the enacted bill would be July 1, 2016.

FISCAL IMPLICATIONS

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year.

A longer length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

There is no appropriation included in HB68; no additional impact on the operating budgets for the Children, Youth and Families Department (CYFD) was reported.

The AOC reported any additional fiscal impact to the judiciary would be proportional to the enforcement of and commenced hearings. Increased penalties cases may result in an increase in the number of accused persons who will invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. However, the AOC was unable to provide any specific estimate for possible fiscal impacts.

The AODA reported a possibility of fiscal impact for District Attorney's Offices statewide for additional prosecutorial resources, however no specific estimate was provided.

The PDD reported the proposed change in punishment is not likely to increase caseloads; however the bill significantly increases the penalty for intentional child abuse resulting in death making resolution by plea agreement less likely and increasing the number of cases going to trial. Additionally, the PDD stated such cases will need to be handled by higher-paid, more experienced attorneys. There could also be an increased need for investigators or experts. Any increase in the demand or need for more experienced attorneys or other personnel may bring an associated need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

SIGNIFICANT ISSUES

CYFD stated negligent abuse of a child and intentional abuse of a child are different with regard to the mindset of the offender. This bill changes the level of culpability to be more synonymous with the corresponding level of mindset by increasing the degree of felony when an act of child abuse is an intentional act.

AOC stated this bill separates out and increases the penalties for intentional child abuse not resulting in death or great bodily harm from what is currently called abuse not resulting in death or great bodily harm. The amended language in Section 30-6-1(E) adds the term "negligent" before the term "abuse," thus creating a section for negligent abuse and another section for intentional abuse. The purpose of HB 68 is to enact increased penalties for intentional child abuse. However, in adding the word "negligent" in Subsection (E), HB 68 is likely to perpetuate confusion that has existed in in both case law and the Rules for Uniform Jury Instructions. This issue has been the subject of two recent NM Supreme Court cases, *State v Consaul* and *State v Montoya*.

In *State v Consaul*, 2014-NMSC-30, the NM Supreme Court expressly overruled prior case law regarding criminal child abuse stating that, "what has long been called criminally negligent child abuse should be hereafter labeled reckless child abuse without any reference to negligence."

State v Consaul, 2014-NMSC-30, ¶37, 332 P.3d 850. *Consaul* explains at great length the Court’s history of discomfort with language often associated with civil negligence used in the context of criminal negligence. The Court specifically mentions Section 30-6-1(A)(3) and the phrase “knew or should have known,” concluding that the legislature must have “intended the term ‘reckless disregard’ to prevail when ‘knew or should have known’ conflicts.” *Id.* ¶40.

In *State v Montoya*, 2015-NMSC-10, the NM Supreme Court reiterated its holding in *Consaul*, stating that, “thus we now expressly adopt the same rule that ‘criminally negligent child abuse’ should hereafter be labeled ‘reckless child abuse’ without any reference to negligence.”

A suggestion might be to amend 30-6-1 to reflect the recent NM Supreme Court decisions by replacing the word “negligent” in Section 30-6-1 with the word “reckless” wherever it appears. Replace the definition of negligently in Section 30-6-1(A)(3) with reckless

"negligently" refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.	“reckless” means consciously disregard a substantial and unjustifiable risk of such a nature and degree that its disregard involves a gross deviation from a reasonable standard of conduct.
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Source: AOC

PERFORMANCE IMPLICATIONS

The AOC reported the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

The AOC stated HB68 and HB69 both amend the same section (30-6-1) but have some inconsistencies. For example, subsection G in HB68 is new material, whereas subsection G in HB69 is the current subsection H.

The AODA reported a concern regarding a companion bill (HB 69), Intentional Child Abuse Resulting in Death, which will further amend 30-6-1 to address stronger punishment for intentional abuse leading to death of a child crimes. The agency believes HB 68 must be enacted first, and HB 69 thereafter, to avoid a situation where HB 69 changes the law and then, it could be argued, HB 68 changes it back to its original version, because HB 68 does not include any changes to the child abuse resulting in death wording.

KK/jle

Most Serious Crime Degree Admission Charge	Estimated Annual Admissions (average of last 4 years)	Increased Sentence length	Estimated Increased Cost Per Offender	Estimated Increased Cost for all Offenders
Move from 3rd to 2nd Degree Child Abuse	31	0.96	\$43,295	\$1,342,151
Move from 2nd to 1st Degree Child Abuse	4	4.17	\$188,493	\$753,974

Using the New Mexico Corrections Department's average cost to incarcerate a male inmate of \$45,250 per year in a state-owned prison.