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FISCAL IMPACT REPORT

ORIGINAL DATE 1/30/18
LAST UPDATED 2/01/18 **HB** 100/ec

SPONSOR Maestas Barnes

SHORT TITLE Child Abuse Penalties **SB** _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	Long Term	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	Indeterminate but will increase costs over time	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Conflicts with SB 296
 Relates to HB 18, HB 28, SB 96

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Law Offices of the Public Defender (LOPD)
- New Mexico Attorney General (NMAG)
- Children, Youth and Families Department (CYFD)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 100 amends Section 30-6-1 to make intentional abuse of a child resulting in death a first degree felony resulting in the death of a child (which carries a life sentence) regardless of the child’s age. Currently, life sentences are reserved for intentional child abuse that results in the death of a child less than twelve years of age; intentional child abuse resulting in the death of a child twelve to eighteen years of age is presently punished as a first-degree felony (which carries a mandatory 18 year sentence).

HB 100 also amends existing law governing abandonment or abuse of a child to replace “hospital” with “safe haven site” to make the law consistent with the Safe Haven for Infants Act. This language clarifies existing law that a person leaving an infant 90 days of age or less at a safe haven site may be prosecuted for abuse of the infant for that person’s actions occurring before leaving the infant at that site.

This bill contains an emergency clause.

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 cost per day to house an inmate in public state prisons in FY17 was an average of \$123 per day, or about \$44,895 per year. Increased 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 pushing the overall prison population higher. NMCD’s general fund budget, not including supplemental appropriations, has grown by an average of two percent, and the FY18 budget is 11 percent higher than FY14, closely mirroring the inmate population growth of 10 percent. The LFC reported in its FY19 budget recommendation that NMCD ended FY17 with a \$1 million budget surplus.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

The AOC reports 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 also will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. However, the AOC is unable to provide any specific estimate for possible fiscal impacts. Similarly, the AODA advises there is a possibility of fiscal impact for District Attorney’s Offices statewide for additional prosecutorial resources: greater potential penalties may result in more cases going to trial, or may result in more plea agreements. As a result, no specific estimate is provided.

The LOPD reports the bill significantly increases the penalty for intentional child abuse resulting in death of a child twelve to eighteen years of age, making resolution by plea agreement less likely and increasing the number of cases going to trial. Additionally, the LOPD states 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 provides this rationale for the change contained in HB 100:

Currently, intentional child abuse resulting in death of a child aged twelve or older is treated differently from abuse leading to the death of a child under twelve years of age. While both deaths result in first degree felony charges, only those offenders who intentionally abuse children younger than twelve are subject to the enhancement for abuse resulting in death. All children’s lives are equally as valuable and should be treated the same under the law. This bill treats the crime of intentional child abuse resulting in the death of the child the same, no matter the age of the child.

On the other hand, LOPD comments:

Currently, intentional child abuse covers a wide range of acts involving any child under the age of eighteen and, in the endangerment context, requires the defendant to act with the conscious object of endangering the child. *State v. Granville*, 2016-NMCA-094, 384 P.3d 1121; NMSA 1978, §§ 30-6-1(A) (1) and 30-6-1(D) (1). The defendant does not need to act with the intent to kill, or even injure, or with a depraved heart as would be required for the defendant to be convicted of first degree murder. *See* NMSA 1978, §§ 30-2-1 (first and second degree murder). Thus, HB 100 would result in more people serving *life sentences* for conduct that is less culpable than that proscribed by the homicide statute simply because the victim was seventeen instead of nineteen. For example, a nineteen-year-old could receive a life sentence for the death of a seventeen-year-old without the State having to establish the traditional requirements for a homicide, such as the intent to kill or harm. Moreover, unlike child abandonment, child abuse does not require that the person be a parent, guardian, or caregiver, so it applies to anyone.

In addition, LOPD believes this bill’s application of a life sentence to intentional child abuse resulting in death regardless of the child’s age ignores the historic reservation of such a sentence for crimes with victims under the age of twelve because these children are more vulnerable, less able to defend themselves, and less likely to be engaged in a violent or dangerous lifestyle. LOPD suggests such reasoning is less applicable to teenaged children. Instead, it contends crimes against older children that result in death are more likely to resemble crimes against adults and are already punished under the homicide statutes, where guilt is fittingly linked to intent and dangerousness. *See* NMSA 1978, Sections 30-2-1 (first and second degree murder) and 30-2-3 (manslaughter). In addition, it advises the disparity in punishment coupled with the relaxed standards of proof required to establish child abuse could give rise to substantive due process and equal protection concerns, especially when the statute is applied to juvenile-on-juvenile crimes or crimes where the parties’ ages are comparable.

Both AODA and AOC call attention to the change in Section 30-6-1(K) that replaces “hospital” with “a safe haven site”. It notes that a safe haven site is defined in Section 24-22-2 (Safe Haven for Infants Act) to include a hospital, law enforcement agency, or fire department with on-site staff. This change clarifies the liability of a person leaving an infant at one of these locations for injuries sustained prior to the infant’s delivery to the site.

PERFORMANCE IMPLICATIONS

The AOC reports 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, RELATIONSHIP

This bill conflicts with SB 296, which in pertinent part makes intentional abuse of a child who is 12 to 18 years of age which results in death of the child committed by a person who is not a parent, guardian or custodian a first degree felony. This bill also relates to HB 18 and HB 24, which add additional crimes to the definition of “violent felony” in Section 31-18-23(E)(2), NMSA 1987 (the existing “three strikes” law) and SB 96, which makes the penalties for both negligent and intentional abuse of a child resulting in great bodily harm a first degree felony.

OTHER SUBSTANTIVE ISSUES

NMAG comments that, while under existing law the sentence for a first degree felony resulting in the death of a child is life imprisonment, the New Mexico Supreme Court has held that a life sentence imposed for this type of felony is subject to mitigation up to one-third (or ten years) if appropriate because it is a noncapital felony. *State v. Cabezuela*, 2015-NMSC-016, 350 P.3d 1145; *State v. Montoya*, 2015-NMSC-010, 345 P.3d 1056; *State v. Juan*, 2010-NMSC-041, 148 N.M. 747.

NMSC provides this breakdown of admissions to the NM Corrections Department for great bodily harm or death of a child under the section of law being amended in this bill for fiscal years 2012 through 2017. Available data does not differentiate between convictions for death of a child due to abuse or great bodily harm not resulting in death:

FY12: 9 admissions
FY13: 8 admissions
FY14: 10 admissions
FY15: 5 admissions
FY 16: 12 admissions
FY17: 6 admissions

MD/jle/al