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FISCAL IMPACT REPORT

SPONSOR: Garcia, M. DATE TYPED: 2/20/03 HB _____

SHORT TITLE: Increase Penalty for Child Abuse SB 326

ANALYST: Wilson

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	Insignificant		Recurring	General Fund

SOURCES OF INFORMATION

Responses Received From
 Administrative Office of the Courts (AOC)
 Public Defender Department (PDD)
 Administrative Office of the District Attorneys (ADA)
 Attorney General's Office (AGO)
 Corrections Department (CD)

SUMMARY

Synopsis of Bill

Senate Bill 326 increases the penalty for abuse of a child that results in the child's death. Current law states that if the abuse results in great bodily harm or death to the child, the abuser is guilty of a first-degree felony. SB 326 proposes to separate the penalty for great bodily harm from abuse resulting in death to the child.

- The proposed penalty for a person who commits abuse of a child that results in great bodily harm is guilty of a first-degree felony.

- The proposed penalty for a person who commits abuse of a child that results in death is guilty of a first-degree felony resulting in the death of a human being.
- Because of this proposed separation of penalties, the bill also adds another basic sentence of imprisonment – if a person is convicted of a noncapital felony, the basic sentence of imprisonment for a first-degree felony resulting in the death of a human being is 24 years imprisonment.
- The court shall include in the judgment and sentence of each person convicted of a first, second, third, or fourth degree or a first, second or third degree felony resulting in the death of a human being and sentenced to imprisonment in accordance to the law.
- SB 326 makes it possible for a court, in addition to the imposition of a basic sentence of imprisonment, to impose a fine not to exceed \$17,500 for a first-degree felony resulting in the death of a human being.

Significant Issues

The PDD notes increasing penalties for the crime of child abuse resulting in death by changing the sentencing statute affects other crimes. For example, a "first degree felony resulting in death" in the sentencing statute is the definition of first-degree murder. The current penalty for first-degree murder is a mandatory thirty-year term of imprisonment without the ability to earn meritorious good time.

If the sentencing statute were amended to increase the punishment for child abuse resulting in death, the punishment for first-degree murder would be **reduced** to twenty-four years.

If the legislative intent is to increase the penalty for child abuse resulting in death, the child abuse statute can be changed to reflect that intent.

FISCAL IMPLICATIONS

Adding another basic sentence of imprisonment for a first degree felony resulting in the death of a human being may take up a considerable amount of judicial time because the district courts have to conduct not only a trial, but a sentencing phase as well. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase.

The AOC notes as penalties increase, potential imprisonment tends to inspire defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

SB 326 will have a significant impact on the PDD because child abuse cases are among the most protracted and expensive to try since they require a great deal of expert testimony. If the penalty is increased, there will be a greater need to go to trial rather than resolve the case through a plea bargain.

SB 326 will increase cost to the CD in later years in later years as a result of the longer prison sentences and longer probation terms.

The private prison annual costs of incarcerating an inmate based upon fiscal year 02 actual expenditures is \$23,552 per year for males. The cost per client to house a female inmate at a privately operated facility is \$25,117 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a private facility.

SB 326 might result in a minimal increase in revenue to the general fund due to the higher fine of \$17,500 available for this new felony as opposed to the current first-degree felony fine of \$15,000.

ADMINISTRATIVE IMPLICATIONS

There is an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

TECHNICAL ISSUES

The ADA suggests adding language to include "first degree death of a human being" in Section 31-20-3 so as to make this sentencing mandatory, if that is what is intended.

POSSIBLE QUESTIONS

Did the drafter of the bill intend to increase the penalty for child abuse resulting in death by decreasing the penalty for first-degree murder?

DW/njw:prr/ls