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## FISCAL IMPACT REPORT

SPONSOR Boykin DATE TYPED 2/14/05 HB 421

SHORT TITLE Increase Penalty For Deadly Child Abuse SB \_\_\_\_\_

ANALYST Hanika-Ortiz

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			See Narrative		

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Public Defender Department (PDD)
- Corrections Department (CD)
- Administrative Office of the Courts (AOC)
- District Attorney Association (DAA)

### SUMMARY

#### Synopsis of Bill

HB 421 amends the Abandonment or Abuse of a Child Statute by creating a crime of “1<sup>st</sup> Degree Felony Resulting in the Death of a Human Being”, and increasing the penalty for child abuse resulting in great bodily harm or death from a mandatory 18 years to 26 years in prison. The court may also impose a fine up to \$17,500. The current statute treats all children the same regardless of age.

HB 421 adds the abuse of a child less than 12 years of age resulting in death to the definition of a “serious violent offense.”

#### Significant Issues

HB 421 would make the abuse of a child twelve years or older resulting in great bodily harm or death, or less than 12 years of age resulting in great bodily harm into a 1<sup>st</sup> degree felony, and would make abuse of a child less than 12 years resulting in death into a newly proposed 1<sup>st</sup> degree felony crime entitled “1<sup>st</sup> Degree Felony Resulting in the Death of a Human Being”. Other child abuse not resulting in death or great bodily harm would remain a third degree felony.

## **PERFORMANCE IMPLICATIONS**

The AOC reports HB 421 may have an impact on district courts performance measures regarding cases disposed as a percent of cases filed, percent change in case filings by case type, and clearance rates.

## **FISCAL IMPLICATIONS**

As the penalty increases, cases become more complex and the defendant is more likely to contest proceedings and request a jury trial which is costly to the court in staff, time and resources. Incarcerating a male inmate is \$20,720 per year, a female is \$26,313. Probation and Parole is \$1,452 per year. An Intensive Supervision program is \$2,852 per year. A Department-operated Community Corrections program is \$4,371 per year. A privately-operated Community Corrections program is \$9,151 per year. A residential Community Corrections program is \$20,725.

AOC and CD report HB 421 would result in longer prison sentences and probation terms. The presumptive sentence for a 1<sup>st</sup> degree felony offense of child abuse is eighteen years imprisonment. Since this crime under HB 421 would become a serious violent offense, the offender could only earn four days of good time per month and would have to serve 85% of the 26 year sentence in prison.

HB 421 could result in an increase in revenue from probation costs, which would be collected over a longer period of time.

## **ADMINISTRATIVE IMPLICATIONS**

The PDD notes that in every case to date where the child abuse has resulted in death, the judge has already imposed the "Serious Violent Offense" penalty.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Conflicts with SB 166, HB 402, HB 422  
Duplicates SB 236

## **TECHNICAL ISSUES**

The DAA reports Section 31-20-3 currently prohibits a judge from suspending or deferring any part of the mandatory eighteen year sentence. By creating a crime of a first degree felony resulting in the death of a human being, a judge would now have discretion to suspend or defer the sentence. The DAA suggests amending Section 31-20-3 to include a first degree felony resulting in death to the list of crimes that a judge cannot suspend or defer.

The PDD is concerned HB 421 would allow people convicted of "negligently permitting" another to have access to a child, and that other person unintentionally causes death, to be sentenced to life in prison, the same penalty as if that person had deliberately murdered the child herself. This could impact the working poor who may not always have the best alternatives for child care.

The PDD notes other 1<sup>st</sup> degree felonies, such as repeat armed robberies or drug distribution

convictions which unintentionally result in death, could be punished by 26 years.

The PDD states HB 421 may create a “loophole” excluding child abusers who cause the death of a child age 12 or older, from the penalty for “first degree felony resulting in death”, which is 26 years imprisonment.

**OTHER SUBSTANTIVE ISSUES**

The PDD proposes an overhaul of the Child Abuse Statute to make a clear distinction between the crimes of negligently permitting, negligent causing, and intentionally causing harm to a child.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?**

Current law provides that these offenders would receive a mandatory 18 year sentence.

**AHO/sb**