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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/11

SPONSOR Park LAST UPDATED _____ HB 324

SHORT TITLE 3rd Degree Aggravated Battery - Strangulation SB _____

ANALYST Sanchez, C.

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Non-Rec | Fund Affected |
|---------------|------|-------------------------|------------------|
| FY11 | FY12 | | |
| | NFI | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|--------|--------|---------|----------------------|-------------------------|------------------|
| Total | \$62.4 | \$93.6 | \$124.8 | \$280.8 | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of District Attorneys (AODA)
 Public Defender Department (PDD)
 Department of Corrections (NMDC)

SUMMARY

Synopsis of Bill

The bill would expand the third degree felony crimes of aggravated battery and aggravated battery against a household member to include such batteries committed by strangulation. Strangulation is defined in the bill as the compression or application of pressure to a person's neck or throat that obstructs the person's blood flow or ability to breathe. Third degree felonies carry a three year prison term.

FISCAL IMPLICATIONS

According to the New Mexico Corrections department (NMCD), the expansion of this crime is unlikely to result in substantial number of new third degree felony convictions or in substantial increases to NMCD prison population or probation/parole caseloads. NMCD estimates a total of four new felony convictions during the relevant three year period, resulting in an incarceration cost of \$280,800 to NMCD. This is only an estimate, and it could be low or high. NMCD cannot control who is convicted and sentenced to its custody. There is no appropriation in the bill to cover these incarceration costs or any subsequent probation/parole supervision costs.

Any fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

According to the Public Defender Department (PDD), the bill would not criminalize activities that were not already crimes however bill might generate felony convictions in cases that would be misdemeanors under existing law (the harmless strangulation scenario alluded to above, which could occur, for example, in a bar fight where the defendant grabs his opponent by the collar) thus greater aggregate sentences will require more jail and prison facilities.

SIGNIFICANT ISSUES

Presently, Section 30-3-5 limits the crime of felony aggravated battery (a third-degree felony) to any touching done “in any manner whereby great bodily harm or death can be inflicted, or to touchings with a deadly weapon, or to touchings that actually result in great bodily harm. At present, a person who strangles another is guilty of a third-degree felony (rather than a misdemeanor) unless he can persuade a jury that 1) he did no real harm; 2) his hands are not deadly weapons; and 3) he did not strangle the other person in a “manner whereby great bodily harm can be inflicted.”

The bill proposes to make all strangulation, defined as “the compression or application of pressure to a person’s neck or throat that obstructs the person’s blood flow or ability to breathe,” a third-degree felony. This brings the hypothetical harmless defendant described in the paragraph above into the felony class.

ADMINISTRATIVE IMPLICATIONS

NMCD staff should be able to administratively absorb and provide relevant services to these additional offenders at current staff levels if the bill results in only a few additional convictions in each three year period.

OTHER SUBSTANTIVE ISSUES

If numerous new or expanded crime bills such as this one are passed, NMCD will eventually reach its rated capacity for its prison population. At that point, NMCD and/or the State will have three options: house inmates out of state, consider early release of inmates in accordance with the Corrections Population Control Act or other applicable state laws, or build more prisons or add space to existing prisons. All three options have negative consequences. The early release of

prisoners jeopardizes prison safety, and housing prisoners out of state or building new prisons is expensive.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

CS/mew