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## FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/12

SPONSOR Park LAST UPDATED \_\_\_\_\_ HB 145

SHORT TITLE Strangulation as Third Degree Battery SB \_\_\_\_\_

ANALYST Sánchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		93.3	93.3	186.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB60

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 New Mexico Corrections Department (NMCD) Response to HB60  
 New Mexico Sentencing Commission (NMSC) Response to HB60  
 Public Defender Department (PDD) Response to HB60  
 Attorney General's Office (AGO) Response to HB60  
 Parole Board (PD) Response to HB60

### SUMMARY

#### Synopsis of Bill

House Bill 145 would expand the third degree felony crimes of aggravated battery and aggravated battery against a household member to include 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 a substantial number of new third degree felony convictions or in substantial increases to NMCD prison population or probation/parole caseloads. If the Legislature and Governor choose to pass this bill in the interests of improving or enhancing public safety, NMCD estimates that it will result in a total of four new felony convictions during the relevant

three year period, resulting in an incarceration cost of \$280,000 to NMCD. This is only an estimate, and it could be high or low. NMCD cannot control who is convicted and sentenced to NMCD's custody or probation supervision. There is no appropriation in the bill to cover these increased incarceration or probation/parole supervision costs.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The cost to incarcerate a male inmate ranges from an average of \$36,700 per year in a state owned/ operated prison to \$30,093 per year in a contract/private prison (where primarily only level III or medium custody inmates are housed). The cost to house a female inmate at a privately owned/operated facility is \$32,408 per year. Because the capacities of medium and higher custody state owned prisons are essentially at capacity, any net increase in inmate population will likely have to be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$2,608 per year. The cost per client in Intensive Supervision programs is \$1,068 per year. The cost per client in Community Corrections is \$5,524 per year. The cost per client per year for female residential Community Corrections programs is \$39,149 and for males is \$16,805.

According to the Administrative Office of the Courts (AOC) any fiscal impact on the judiciary would be proportional to the enforcement of the new law and commenced prosecutions. New laws and amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

There might be a minor increase in the number of trials due the perception of an increase in penalty for any battery involving choking. These would probably be absorbed in the ordinary course of business by the courts, DAs and PDD.

## **SIGNIFICANT ISSUES**

The Attorney General's Office reports the following:

“The Domestic Violence Abuse prevention coalitions and entities have identified “strangulation” as a **significant lethality indicator** in domestic violence cases. Adding “strangulation” to section C(3) and in the definitions in new section (D) is intended to identify and recognize strangulation as a serious and potentially lethal form of domestic abuse.

See Violence: Recognition, Management and Prevention, Parts I through III, article in the Journal of Emergency Medicine, Vol21, No. 3, (2001), a study by Indiana University School of Medicine, Stanford Medical School and Office of the San Diego City Attorney.

See also: Jail Rare for Domestic Violence, \*2 in more than 174 cases spent more than one week in jail, police reports say, Journal Santa Fe, article, Thursday Jan 19, 2012 quoting remarks from David River, co-facilitator with Santa Fe Coordinated Community Response presentation on Wednesday, January 18, 2012.

This bill attempts to clarify the domestic violence connection by amending section C of NMSA 30-3-16. Aggravated Battery Against a Household Member, by adding “strangulation” to the enumerated types of aggravated battery and a definition which distinguishes the act of strangulation.”

This bill, because it is narrowly drafted, would likely withstand most scrutiny, especially arguments of vagueness or over breadth. One conceivable colorable challenge could be that the bill would provide an evidentiary shortcut to prosecutors. In other words, by defining strangulation, even if narrowly, the bill might be attacked on grounds that it permits a lay witness (victim or law enforcement officer) to testify to something that would ordinarily require an expert. However, other definitions provided by our criminal and motor vehicle statutes and uniform jury instructions (great bodily harm, impairment to the slightest degree, reckless, wanton, heat of passion, etc.) have not been successfully challenged.”

### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance based budgeting. HB 60 may have an impact on the measures of the courts in the following areas:

- Cases disposed of as a percentage of cases files
- Percent change in case filings by case type

The NMCD’s performance measures should not be significantly impacted by the requirements of this bill.

### **ADMINISTRATIVE IMPLICATIONS**

The NMCD should be able to administratively absorb and provide relevant services to the additional offenders at current staffing levels if the bill only results in a few additional convictions.

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

Duplicates HB60

### **ALTERNATIVES**

The AGO suggests including non-strangulation modalities of injury which pose the same risk, to wit: smothering by object (for example, a pillow), forcible compression of the chest (common in domestic violence incidents where the aggressor has a size advantage over the victim), forcible covering of the victim’s mouth, and use of objects to “gag” a victim by forcing said items into a victim’s throat. Heightening the penalty for cases involving strangulation or other airway restriction where victim loses consciousness to second degree felony.

### **POSSIBLE QUESTIONS**

Would it require medical testimony to convict?

Would it have an unintended consequence of making it difficult to establish without obtaining expert medical testimony?

Could be covered under existing statutes, if personnel were sufficiently trained to include?

ABS/lj