

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/12

SPONSOR Hall LAST UPDATED _____ HB 276

SHORT TITLE Crime of Failure to Report Death of a Child SB _____

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 97; Duplicates SB13

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)

Administrative Office of the Courts (AOC)

Attorney General Office (AGO)

Children, Youth and Families Department (CYFD) Response to SB13

Department of Public Safety (DPS) Response to SB13

New Mexico Sentencing Commission (NMSC) Response to SB13

Public Defender Department (PDD) Response to SB13

SUMMARY

Synopsis of Bill

House Bill 276 creates a new section of the Criminal Code making failure to report the disappearance of a child by a parent or guardian within 24 hours of a disappearance as a misdemeanor. Failure to report the death of a child within one hour by a parent or guardian if the death was not under the care of a health care professional or emergency medical personnel is a misdemeanor. The age of the child in this bill is under 14 year of age. The effective date of the bill is July 1, 2012.

FISCAL IMPLICATIONS

Funding to enforce this bill is deemed included in law enforcement and district attorney appropriations.

SIGNIFICANT ISSUES

CYFD reports in its response to SB13 that similar legislation is being introduced in a number of states as a result of the Caylee Anthony trial in Florida. The child was not reported missing by her parent and was later found murdered.

NMSC states in its response to SB13 the penalties provided in this bill are proportional to those for failure to report child abuse and neglect found in Section 32A-4-3 NMSA 1978. However, it poses the question of whether the law should apply to a 17-year old serial runaway.

AODA states these two misdemeanors can be absorbed fairly easily into the administrative systems existing agencies.

The AGO's response states that this bill is intended to prevent delays in reporting the disappearance or death of a child, which can then seriously compromise rescue efforts and, in worst case scenarios, compromise a criminal investigation. The penalties in this bill are as high as third degree felonies. Similar bills introduced this session called for misdemeanor or fourth degree felony penalties. Proponents argue that the penalty for failure to report should be significant. Opponents argue that the bill is overbroad and may ensnare innocent parents or guardians. The phraseology "knew or should have known", and "circumstances would lead a reasonable person to believe that death occurred as a result of a crime" would reduce the number of parents or guardians charged under this law.

DPS in its response to SB13 that the bill raises the consideration of possible Miranda complications if reporting is delayed due to an individual seeking legal counsel. In addition, the law does not define when the "clock starts to run" on the reporting requirements. DPS also advises some states have enacted similar legislation where the failure to report is a felony.

RELATIONSHIP

HB 276 is related to SB 97 which expands the reporting to include individuals with Alzheimer's or another degenerative brain disorder. It further states, the failure to report is a fourth degree felony if a reasonable person would believe the child or adult was in danger of physical harm.

HB276 duplicates SB13

OTHER SUBSTANTIVE ISSUES

The AGO in its response to SB13 offers that parents or guardians may not know when a child went missing. In some instances, a parent may not know a child died and gives an example of an automobile accident when the parent or guardian is not with the child at the time of the accident. The short timelines "may ensnare innocent parents."

PDD suggests additional definitional language should be included to forestall litigation.

ABS/amm