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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/22/13  
 SPONSOR SPAC LAST UPDATED 03/10/13 HB \_\_\_\_\_  
 SHORT TITLE Crimes of Strangulation and Suffocation SB CS/262/aSJC  
 ANALYST Jorgensen

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	\$31.7 - \$317.0	\$31.7 - \$317.0	\$62.4 - \$624.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

- Administrative Office of the Courts (AOC)
- Attorney General’s Office (AGO)
- Public Defender Department (PDD)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to the Senate Public Affairs Committee substitute for Senate Bill 262 expands the definitions of strangulation and suffocation to include a provision that the act of strangulation or suffocation “causes painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body.”

#### Synopsis of Original Bill

The Senate Public Affairs Committee substitute for Senate Bill 262 amends the Sections 30-3-5(C) (aggravated battery) and 30-3-16(C) (aggravated battery against a household member) to create the third-degree felony crimes of strangulation and suffocation defined as follows:

- **Strangulation:** consists of knowingly or intentionally touching or applying force to another person’s neck or throat, the result of which impedes the person’s normal breathing or blood circulation.
- **Suffocation:** consists of knowingly or intentionally touching or applying force that blocks the nose or mouth of another person, the result of which impedes the person’s normal breathing or blood circulation.

## **FISCAL IMPLICATIONS**

The estimated fiscal impact in the above table reflects a range of between one and 10 additional inmates incarcerated in private prison facilities per year. The NMCD notes that “it is always difficult to predict or estimate the ultimate effect of any new crime bill with certainty”.

The potential fiscal impact of this legislation may be increased dramatically depending on how often strangulation or suffocation are charged. Because strangulation and suffocation would be a 3<sup>rd</sup> degree felony and are very common in cases of domestic violence there is possibility that district attorneys and public defenders will need to allocate more senior attorneys to prosecute and defend cases originating as a result of the enactment of this legislation.

## **SIGNIFICANT ISSUES**

The AOC has stated the following:

Section 30-3-5(C) NMSA 1978 limits the third-degree felony crime of aggravated battery 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 or she did no real harm; 2) his or her hands are not deadly weapons; and 3) he or she did not strangle the other person in a “manner whereby great bodily harm can be inflicted.”

The AGO has observed that “while it could be argued that strangulation and suffocation are already forms of third degree aggravated battery, this bill would merely clarify that.”

The PDD noted that “since the new crime does not require any harm beyond interference (no matter how brief) with breathing, this would enable serious felony charges to frequently be filed in cases where there is no actual physical harm. The charges would be brought in the district courts instead of the metropolitan/magistrate courts and would require more senior personnel to be assigned and more thorough investigations to be performed as a matter of course.”

The AODA reported that if the impediment to breathing or circulation was not sustained or did not arise in the context of an apparent intent to injure proving strangulation or suffocation will be difficult.

## **OTHER SUBSTANTIVE ISSUES**

According to the NMSC, As August 2012, 22 states did not have specific criminal offenses regarding strangulation. 12 states have laws that address strangulation as a specific criminal offense. In other states, strangulation is included as an element in more general criminal statutes.