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FISCAL IMPACT REPORT

SPONSOR Park **ORIGINAL DATE** 02/03/12 **LAST UPDATED** 02/14/12 **HB** 183/aHJC

SHORT TITLE Crimes Committed Against Children Penalties **SB** _____

ANALYST Daly/Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY12	FY13	FY14	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	Minimal to Moderate*	Minimal to Moderate*	Minimal to Moderate*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*See Fiscal Implications below.

Conflicts with HB 128 and SB 58.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorney (AODA)
 Attorney General’s Office (AGO)
 Public Defender Department (PDD)
 Children, Youth & Families Department (CYFD)
 New Mexico Corrections Department (NMCD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment to House Bill 183 deletes the term “negligently” and substitutes in the body “with reckless disregard” for negligently. Child abuse not resulting in death or great bodily harm is changed back to a third degree felony for the first offense and a second degree felony for subsequent offenses. A new paragraph is added stating “intentional abuse” not resulting in death or great bodily harm is, for the first offense, a second degree felony and a first degree felony for subsequent offenses. Finally, penalties for the death of a child or great bodily harm from vehicle operation are applied to a child 13 and older.

Synopsis of Original Bill

House Bill 138 makes changes to the elements of a number of criminal statutes in which the victim is a child, and increases the penalties for crimes committed against children. This bill:

- Increases the penalty for a first offense for child abuse that does not result in death or great bodily harm from a third to a second degree felony; and increases the penalty for a subsequent offense from a second to a first degree felony;
- Expands the definition of criminal sexual penetration to include penetration perpetrated on a child “thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit”;
- Removes the element of criminal sexual contact of child thirteen to eighteen years of age that the act must result in personal injury to the child;
- Reduces the age limitation on criminal sexual contact of a minor in the fourth degree from eighteen to sixteen and removes the requirement that the perpetrator must be associated with a school;
- Requires the aggravated indecent exposure be done in a lewd and lascivious manner, and that the perpetrator of that exposure be at least eighteen years of age, four years older than the child, and not the spouse of the child; and
- Increases the penalty of aggravated indecent exposure for a child under 18 to a third degree felony.

HB 183 also amends the Motor Vehicle Code to eliminate violation of speeding laws as a per se grounds for homicide by vehicle or great bodily harm by vehicle. It also increases penalties as to certain offenses committed against children:

- Vehicular homicide or great bodily injury to a child under eighteen becomes a second degree felony; and
- Reckless operation of a motor vehicle while resisting or evading a law enforcement officer and resulting in great bodily harm or death of a child under 18 becomes a second degree felony.

The effective date of this bill is July 1, 2012.

FISCAL IMPLICATIONS

As the AODA notes, any time a penalty for crime is increased, criminal justice system costs (AOC, AODA, PDD, AGO) rise to prosecute and defend the offender, since many offenders will decide to go to trial rather than plead to an increased penalty. The PDD notes that because first degree felony convictions for child abuse result in mandatory 18 year sentences, defendants have little to lose by going to trial. Additionally, at least some of these cases require the PDD to procure medical experts, which increases the fiscal impact on that department as well as on the prosecutor. The AODA advises there are large numbers of these cases prosecuted each year, so the impact of increased trials could be significant. Similarly, removing the element of personal injury to the victim in criminal sexual contact cases will also increase the number of cases prosecuted, resulting in more trials and appeals.

The NMCD advises that the increased penalties in HB 183 are likely to increase the department's costs due to minimal to moderate increases in prison population. The Department, however, does not anticipate an impact on a large number of offenders, and any increase is likely to occur more than the three year period set out in the table above. The NMCD reports that 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.

In light of these factors and without accurate estimates of the actual increases in costs resulting from the increased penalties and other changes set out in HB 183, the fiscal impact is shown as minimal to moderate in the table above.

SIGNIFICANT ISSUES

As noted in the Fiscal Implications section, HB 183 significantly increases the penalties for crimes committed against children. For example, the increase in the penalty for abuse of a child from a third degree felony to a second degree felony for a first offense triples the basic sentence from 3 to 9 years. For second and subsequent convictions of abuse of a child, the penalty increases from a second degree felony to a first degree felony, which doubles the sentence from 9 years to 18 years. The amendments to the vehicular homicide statute increase the penalty for causing the death of or great bodily harm to a child from 6 years to 15 years.

Additionally, as to the new category of criminal sexual penetration when the victim is a child thirteen to eighteen years of age and the perpetrator "is in a position of authority" over the child and uses this authority to coerce the child to submit (Section 2(E)(2)) may have limited impact since the same crime may be proven under existing law when force or coercion is used on a victim within the same age bracket (Section 2(E)(1)). The AODA suggests that if the penalty for the new category were different, then the amendment to existing statutes might have more impact.

CONFLICT

HB 183 conflicts with both HB 128 and SB 58 because it does not contain the amended definition of aggravated criminal sexual penetration contained in either of those two bills.

AMENDMENTS

The AODA suggests that the legislature may want to consider increasing the penalty for criminal sexual penetration of a child when the offender is a "person in position of authority" over the child and uses that authority to coerce the child.