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## FISCAL IMPACT REPORT

**SPONSOR** James **ORIGINAL DATE** \_\_\_\_\_ **LAST UPDATED** 02/10/15 **HB** 182

**SHORT TITLE** Crimes Against Children Penalties **SB** \_\_\_\_\_

**ANALYST** Daly

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

### SUMMARY

#### Synopsis of Bill

House Bill 182 increases the penalty for intentional abuse of a child that does not result in death or great bodily harm from a third degree to a second degree felony for the first offense; for a subsequent offense, the penalty is increased from a second to a first degree felony.

The bill also clarifies the penalty for (1) negligent abuse of a child that does not result in the child's death or great bodily harm, which is a third degree felony for the first offense and for a subsequent offense is a second degree felony; (2) intentional abuse of a child of any age resulting in great bodily harm, which is a first degree felony; and (3) intentional abuse of a child of any age resulting in the child's death, which is a first degree felony resulting in the death of the child.

The effective date of this bill is July 1, 2015.

## FISCAL IMPLICATIONS

PDD reports that currently there are a significant number of cases involving intentional child abuse charges. While HB 182's increase in punishment is not likely to increase case load, it makes resolution by plea agreement less likely and thus increase the number of cases going to trial. Additionally, such cases will need to be handled by higher-paid, more experienced attorneys, as well as increasing the need for investigators or experts. At least some of these factors may also lead to increases in operating budgets for district attorneys and, with more trials, the court system. None of these increases are quantifiable.

Similarly, NMCD states that the increased penalties or incarceration periods for offenders convicted of intentional abuse of a child may eventually increase its costs by leading to minimal to moderate increases in the inmate population, although any such increase would tend to occur more than three years from now, when the offenders begin serving their extended (life) sentences. NMCD reports the average cost to incarcerate a male inmate is \$43,603 per year in a state-owned and operated prison, and the average annual cost in a privately operated prison is \$29,489 (where primarily only level III or medium custody inmates are housed). Further, offenders placed on probation for the crimes covered by this bill seem likely to be immediately or eventually placed on standard supervision, for a cost of \$2,783 per parolee per year.

## SIGNIFICANT ISSUES

HB 182 makes negligent abuse of a child resulting in death of the child a first degree felony, but intentional abuse of a child resulting in the child's death is a first degree felony resulting in the death of a child. AODA explains the distinction between "first degree felony" and "first degree felony resulting in the death of a child": the basic sentence for a first degree felony is 18 years, while the basic sentence for "a first degree felony resulting in the death of a child" is life imprisonment. See Section 31-18-15(A), NMSA 1978.

PDD provides this analysis of the impact of HB 182:

HB 182's amendments would represent significant increases in sentences. For persons convicted of intentional child abuse not resulting in death or great bodily harm exposure would increase from 3 to 9 years for a first offense and from 9 to 18 mandatory years for a second or subsequent offense. Section 31-18-15(A). For persons convicted of intentional child abuse which results in the death of a child age twelve to eighteen the basic sentence increases from 18 mandatory years to life in prison. *Id.*

While HB 182 substantially increases the punishment associated with intentional child abuse, it leaves unaltered the conduct, mental state, and harms (or lack of same) currently required to sustain convictions for intentional child abuse.

Under current law, intentional child abuse covers a wide range of acts directed towards or involving any child under the age of eighteen. For instance, acts which are not directed towards a child but which endanger a child fall within the ambit of the statute. Section 30-6-1(D)(1). Acts which are directed towards a child but which are not meant to and do not in fact result in any harm coming to the child also fall within the ambit of the statute. Finally, acts which are committed without any intent to harm or even endanger a child also fall within the statute because, as it is currently interpreted, intentional child abuse

requires only general criminal intent or the purposeful doing of an act the law declares to be a crime, whether or not the person is aware that it is a crime. *See State v. Schoonmaker*, 2005-NMCA-012, ¶ 24, 136 N.M. 749, 105 P.3d 302, *reversed on other grounds by State v. Schoonmaker*, 2008-NMSC-010, 143 N.M. 373 (“[c]hild abuse is a general intent crime.”). Notably, general criminal intent represents a less stringent intent requirement than the specific intent required for child abandonment, even though child abandonment is a misdemeanor if the child does not die or suffer great bodily harm and a second-degree felony if the child does. Section 30-6-1(B). Thus, HB 182 would punish less culpable conduct more harshly than the current statute does.

HB 182 also makes child abuse convictions disproportionately harsh when compared to other crimes involving similar conduct while requiring less in terms of proof. If someone were to hit a sixteen year old without causing harm, under HB 182, the crime would be punishable as a second-degree felony regardless of whether a weapon was used. Under the battery statute, however, such conduct would only constitute a petty misdemeanor, or if great bodily harm actually resulted or if a deadly weapon was used, it would still only constitute a third-degree felony. See Sections 30-3-4 (battery), 30-3-5 (aggravated battery).

Finally, the application of a life sentence to intentional child abuse resulting in death regardless of the child’s age fails to recognize that such a harsh sentence is appropriately limited to children under the age of twelve because of the fact that such children are more vulnerable, less able to defend themselves, and less likely to be engaged in a violent or dangerous lifestyle. Such reasoning is less applicable to teenaged children. Moreover, crimes against older children which result in death are more likely to resemble crimes against adults which are already punishable under the homicide statutes, where guilt is fittingly linked to intent and/or dangerousness. See Sections 30-2-1 (first and second degree murder) and 30-2-3 (manslaughter). By doing away with any age-based distinction in punishment, HB 182 would result in more people serving life sentences for conduct which is significantly less culpable than that proscribed by the homicide statutes simply because the victim was seventeen instead of nineteen.

While some of the legal inconsistencies identified above are already present under the current statute, HB 182 would exacerbate existing legal inconsistencies in addition to creating new ones.

## **OTHER SUBSTANTIVE ISSUES**

NMCD comments that it is also important to consider the bill’s impact on deterring criminal activity and the ultimate economic savings or benefits it could garner for the state. That is, less direct, more global, long term savings are often overlooked in the fiscal analysis of public safety bills. For example, should this bill’s increased penalties for intentional child abuse increase the public’s sense of safety by deterring and reducing crime victimization, a host of savings could be realized by this state. These savings range from reducing the expenses and impact of crimes upon victims and/or their families (loss of productivity, physical and mental health treatment expenses, and loss of quality of life), reducing the costs associated with victim support and advocacy services as well as court costs to adjudicate offenders, in addition to reducing or eliminating the negative impact of higher crime rates upon the state’s economic recovery or growth. Significantly, NMCD concludes, if these savings are realized, they could ultimately

offset or exceed the more direct and tangible costs of prison management. Intentional enforcement, prevention, and intervention balanced with adequately supported prison management and correctional programming is essential for effective public safety planning.

**AMENDMENTS**

PDD suggests these potential changes: (1) require specific intent to injure or endanger; (2) clarify that intentional abuse does not apply to endangerment cases; or (3) amend the child abuse statute to recognize more gradations of culpability, limiting the harshest punishments to only the most culpable conduct.

MD/aml