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## FISCAL IMPACT REPORT

SPONSOR Ivey-Soto/Smith ORIGINAL DATE 2/08/2018  
LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_  
SHORT TITLE Add Domestic Violence Definitions SB 61/aSJC  
ANALYST Torres

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

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	>\$911.01	>\$895.37	>\$1,806.38	Recurring	General Fund

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Public Defender Department (PDD)  
Office of the Attorney General (NMAG)  
New Mexico Sentencing Commission (NMSC)  
Department of Health (DOH)  
Department of Public Safety (DPS)

#### Responses Not Received From

Administrative Office of the District Attorneys (AODA)

### SUMMARY

#### Synopsis of SJC Amendments

The Senate Judiciary Committee amendments to Senate Bill 61 make clear in definitions that strangulation and suffocation are acts that are conducted “in a manner whereby great bodily harm or death can be inflicted.”

#### Synopsis of Bill

SB 61 amends the Assault & Battery section of the Criminal Code to provide that Aggravated Battery and Aggravated Battery against a Household Member would be third degree felonies where strangulation or suffocation are now included. SB 61 would define strangulation and suffocation as any incidents that impede a person’s normal breathing or blood flow. It would make similar amendments to the Abuse and Neglect and Family Violence Protection Acts. The proposed changes in the statutes would have an effective date of July 1, 2018.

## FISCAL IMPLICATIONS

There may be fiscal constraints in implementing the act as agencies workloads increase to accommodate the additional cases related to the expanded definitions. In the courts, for instance, any fiscal impact is proportional to the enforcement of the law and the related prosecutions. In an analysis for similar legislation in Senate Bill 262 in the 2013 regular session, the NMCD noted that “it is always difficult to predict or estimate the ultimate effect of any new crime bill with certainty,” making the expansion of definitions difficult to estimate in enforcement and prosecution costs.

The Public Defender Department (PDD) estimates that the crime would appear frequently in charges, and because of the criminal classification, would be brought in district court. As a district court case, more senior personnel would be assigned the cases. The PDD estimates a need for five additional trial attorneys with a total cost that includes start up and support staff of \$911 thousand. After the first year, the PDD estimates costs to be \$895 thousand a year.

The Department of Health (DOH), the Department of Public Safety (DPS), the New Mexico Sentencing Commission (NMSC), and Attorney General’s office (NMAG) reported no fiscal implications as a result of SB 61.

Although a response was not received from the Administrative Office of the District Attorneys, AODA reported in a similar bill in the 2015 regular session that district attorneys will “face more litigation in attempting to prosecute these cases under either the general aggravated battery statute, or as attempted murder when the facts so require, in order to seek the original, higher penalty. This will result in fiscal impact on District Attorney budgets, as well as those of the courts and PDD.”

Similarly, NMCD provided analysis for the 2015 regular session bill, and anticipated only a small number of individuals would be convicted of the new further degree felony, which would lead to a minimal to moderate increase in the inmate population and probation/parole caseloads. NMCD reported that “in 2015, the average cost to incarcerate a male inmate was \$43,603 per year in a state-owned and operated prison, and the average annual cost in a privately operated prison was \$29,489 (where primarily only level III or medium custody inmates are housed). The cost per client in Probation and Parole for a standard supervision program was \$2,783 per year. The cost per client in Intensive Supervision programs was \$2,563 per year. The cost per client in Community Corrections was \$3,664 per year. The cost per client per year for female residential Community Corrections programs was \$27,412 and for males was \$18,100. Offenders placed on probation for the crimes covered by this bill seem likely to be immediately or eventually placed on standard supervision.” As in 2015, because of the variously reported fiscal impacts, the estimates provided by the PDD appear in the operating budget impact table above, with the “>” sign representing the additional impact on the District Attorneys, the courts and NMCD.

## SIGNIFICANT ISSUES

The PDD provides this analysis of SB 61, focusing on the new definitions: the language “impedes the person’s normal breathing or blood circulation” is not defined. Laughter impedes a person’s normal breathing - would an unwanted tickling be now charged as a fourth-degree felony? While it is likely that notable impediment is what is intended by the drafters, the lack of precision could be problematic if a prosecutor argued the crime would not require any actual

physical harm beyond the momentary interference with breathing. Felony charges for minimal cases could result in challenges for cruel and unusual punishment. This could easily be resolved with the addition of a word (“notable”, “dangerous” or “substantial”) to describe the necessary impediment of breathing required to sustain a felony conviction.

The PDD also suggests that: the law already criminalizes this behavior: any interruption in breathing is a battery (petty misdemeanor under section 30-3-4 NMSA 1978); a more serious interruption is an aggravated battery (misdemeanor or third degree felony at section 30-3-5 NMSA 1978); and a very serious interruption would be charged as an attempted murder (second degree felony at section 30-2-1 NMSA 1978). Under existing law, any strangulation or suffocation done in such a way that great bodily harm could be inflicted is a third degree felony. However, due to the general/specific rule of statutory interpretation, see *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, enactment of the proposed legislation would lead to challenges that such could henceforth only be charged as lesser fourth degree felonies.

The AOC similarly found that “while it may be helpful to include suffocation and strangulation as distinct actions subject to prosecution as a third degree felony offense of Aggravated Battery Against a Household Member, it may not be necessary to include it in the Family Violence Protection Act and the Abuse and Neglect Act. The addition of suffocation and strangulation to the definition of “domestic abuse” in the Family Violence Protection Act may already be included by the terms “physical harm” and “bodily injury or assault”.

The NMSC has provided a compiled list of strangulation laws from the 2007 National Center for Prosecution of Child Abuse that was updated by the Battered Women’s Justice Project in 2014. The NMSC adds that “the list shows a variety of different definitions and penalties concerning strangulation and suffocation in the states that have addressed these issues directly in statute. The majority of states have specific statutes concerning strangulation.”

## **PERFORMANCE IMPLICATIONS**

The AOC reports that SB61 could impact the performance of the courts as it relates to case disposal and case filings.

The PDD also reports a potential impact on performance. LOPD management and past analysis suggest that about 10 percent of all domestic violence cases involve claim of some sort of choking, and were the law enacted, the PDD would see an increase in complexity of domestic violence cases. Additionally, “enactment would lower the misdemeanor caseload and raise the felony caseload. This would have a net effect of requiring more personnel, however, since effective representation of felonies (carrying substantially greater sentences) require more thorough investigations and more intensive client contact and motions practice than misdemeanors,” according to the PDD. Without additional staff, this could inhibit the ability of current staff to meet current performance expectations.

## **OTHER SUBSTANTIVE ISSUES**

PDD reports that underscoring the present system’s awareness of the seriousness of such acts, any strangulation battery charge in the Second Judicial District is not permitted to be handled by pre-prosecution diversion programs in acknowledgement of studies relating the seriousness of such behavior.