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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/20/2016

**SPONSOR** James **LAST UPDATED** \_\_\_\_\_ **HB** 69

**SHORT TITLE** Intentional Child Abuse Resulting in Death **SB** \_\_\_\_\_

**ANALYST** Klundt

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate but will increase costs	Indeterminate but will increase costs	Indeterminate but will increase costs	Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 68

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

HB 69 amends Section 30-6-1 to make intentional abuse of a child resulting in death a first degree felony resulting in the death of a child regardless of the child's age. Currently, such punishment is reserved for intentional child abuse which results in the death of a child less than twelve years of age; intentional child abuse resulting in the death of a child twelve to eighteen years of age is presently punished as a first-degree felony. The bill makes other minor stylistic changes.

The effective date of this bill is July 1, 2016.

## **FISCAL IMPLICATIONS**

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

There is no appropriation included in HB 69; no additional impact on the operating budgets for the Children, Youth and Families Department (CYFD) was reported.

The AOC reports any additional fiscal impact to the judiciary would be proportional to the enforcement of and commenced hearings. Increased penalties cases may result in an increase in the number of accused persons who will invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. However, the AOC was unable to provide any specific estimate for possible fiscal impacts.

The AODA reports a possibility of fiscal impact for District Attorney's Offices statewide for additional prosecutorial resources, however no specific estimate was provided.

The PDD reports the proposed change in punishment is not likely to increase caseloads; however the bill significantly increases the penalty for intentional child abuse resulting in death making resolution by plea agreement less likely and increasing the number of cases going to trial. Additionally, the PDD stated such cases will need to be handled by higher-paid, more experienced attorneys. There could also be an increased need for investigators or experts. Any increase in the demand or need for more experienced attorneys or other personnel may bring an associated need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

## **SIGNIFICANT ISSUES**

The AODA states this bill will mitigate a problem in intentional child abuse to the point of death prosecutions, which is the difficulty in getting a life imprisonment sentence in their most serious cases, just because of the age of the victim. Without regard to the amount of trauma, suffering, or injury a child victim suffered prior to death, or how long it took that child to die from those injuries, current law punishes only based on age. This is hard to explain to a family whose 12, or 13, or 17 year old died from intentionally inflicted abuse, that their perpetrator will serve a lesser term. This bill would address this most egregious of offenses in a manner that does not impose artificial distinctions between the murder of a child age 11 years, 11 months, for example, and one age 12.

The PDD reports HB 69 would represent a significant increase in sentences for persons convicted of intentional child abuse which results in the death of a child age twelve to eighteen.

Specifically, the punishment for such persons would increase from eighteen mandatory years to life in prison. *See* NMSA 1978, § 31-18-15(A).

While substantially increasing sentences for persons convicted of intentional child abuse resulting in death, HB 69 leaves unaltered the conduct and mental state currently required to sustain convictions for intentional child abuse. Currently, intentional child abuse covers a wide range of acts involving any child under the age of eighteen; including acts which are not directed at a child but nevertheless endanger a child. *See* NMSA 1978, §§ 30-6-1(A)(1) and 30-6-1(D)(1). Also, despite its name, intentional child abuse is not interpreted as requiring any intent to harm, endanger, or abuse a child. Instead, 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.”); *see also* UJI 14-141 (general criminal intent instruction); UJI 14-610 (intentional definitional instruction for child abuse). Notably, general criminal intent represents a significantly less stringent intent requirement than the specific intent required for child abandonment even though child abandonment is only a second-degree felony even when it results in death. NMSA 1978, § 30-6-1(B). General criminal intent also represents a significantly less stringent intent requirement than the intents required for murder. *See* NMSA 1978, §§ 30-2-1 (first and second degree murder), 30-2-3 (manslaughter). Thus, HB 69 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. For example, a nineteen-year-old could receive a life sentence for the death of a seventeen-year-old without the State having to establish the traditional requirements for a homicide, such as the intent to kill or harm.

In addition, the PDD believes this bill’s application of a life sentence to intentional child abuse resulting in death regardless of the child’s age does not recognize that such a harsh sentence is limited to children under the age of twelve because such children are more vulnerable, less able to defend themselves, and less likely to be engaged in a violent or dangerous lifestyle. Instead, crimes against older children which result in death are more likely to resemble crimes against adults and the PDD believes are already punishable under the homicide statutes, where guilt is linked to intent and dangerousness. *See* NMSA 1978, Sections 30-2-1 (first and second degree murder), 30-2-3 (manslaughter).

## **PERFORMANCE IMPLICATIONS**

The AOC reports the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

The AOC states HB 69 and HB 68 both amend the same section (30-6-1) but have some inconsistencies. For example, subsection G in HB68 is new material, whereas subsection G in HB69 is the current subsection H.

**ALTERNATIVES**

The PDD proposed to specify that intentional child abuse requires a specific intent to injure or endanger; clarify that intentional abuse does not apply to endangerment cases; amend the child abuse statute to recognize more gradations of culpability, limiting the harshest punishments for only the most culpable conduct.

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