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## FISCAL IMPACT REPORT

**SPONSOR** James/Maestas **ORIGINAL DATE** 9/30/2016  
Barnes/Rehm **LAST UPDATED** 9/30/2016 **HB** 6  
**SHORT TITLE** Increase Certain Child Abuse Penalties **SB** \_\_\_\_\_  
**ANALYST** Klundt/Daly

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$105.4	\$105.4	\$105.4	\$316.2	Non-recurring	DA, PDD, Courts operating budgets
	\$45.3 per inmate for each additional in custody	\$45.3 per inmate for each additional in custody	\$45.3 per inmate for each additional in custody	\$135.9 per inmate for 3 additional years in custody	Recurring	Corrections Department operating budget

(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)  
 Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)  
 NM Sentencing Commission

**This analysis utilizes responses received from the above agencies who responded to an identical version of this bill during the 2016 Legislative Session.**

### SUMMARY

#### Synopsis of Bill

This bill 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 punishable by life in prison. 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.

## **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.

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

Assuming similar costs for a life sentence case to the judicial system is similar to a death penalty process, the costs to the judicial system to process one individual through the death penalty process, while historically has taken an average of 11 years, is about \$105 thousand per year.

Previously, the AOC reported 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.

The AODA previously reported a possibility of fiscal impact for District Attorney's Offices statewide for additional prosecutorial resources.

The PDD reported 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 stated 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 the child's 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.

Additionally, AODA also responded the bill brings consistency to the sentencing structure in §30-6-1, NMSA 1978; other crimes set out in this section including abuse that does not result in great bodily harm, abuse that does result in great bodily harm, and negligent abuse of a child that result in death do not make sentencing distinction based on the age of the child victim.

The PDD reported this bill 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).

Previous analyses indicated that while substantially increasing sentences for persons convicted of intentional child abuse resulting in death, this bill 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, this bill 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).

The New Mexico Sentencing Commission reported the below admissions to the Corrections Department for great bodily harm or death of a child for fiscal years 2012 through 2016.

NM Corrections Department Admissions: Great Bodily Harm or Death of a Child*				
FY12	FY13	FY14	FY15	FY16
9	8	10	5	12

\*Available data does not differentiate between convictions for death of a child due to abuse or great bodily harm not resulting in death.

For the federal fiscal years 2011 through 2015, and for the period October 1, 2015, through March 31, 2016, New Mexico reported the following child fatalities where death was the result of abuse or neglect, or abuse or neglect was a contributing factor.

	FFY 2011	FFY 2012	FFY 2013	FFY 2014	FFY 2015	Oct 1, 2015 – Mar 31, 2016
Ages 0 – 11	14	15	6	7	15	3
Ages 12 and older	1	1	0	0	0	0
Total	15	16	6	7	15	3

For FFYs 2011 – 2015, numbers based on Federal NCANDS submission.  
 For the period Oct 2015 – Mar 2015, numbers also NCANDS data, not officially submitted.

**PERFORMANCE IMPLICATIONS**

The AOC reported 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

**ALTERNATIVES**

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

**TECHNICAL ISSUES**

The effective date for HB06 is July 1, 2016 - which would purport to give the bill retroactive effect.

KK/jle