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FISCAL IMPACT REPORT

ORIGINAL DATE 01/30/17
LAST UPDATED 03/2/17 **HB** 45/aHCPAC/ec

SPONSOR Maestas Barnes

SHORT TITLE Increase Child Abuse Penalties **SB** _____

ANALYST Daly/Chabot

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	Long Term	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	Indeterminate but will increase costs over time	Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 13, HB 54 and SB 159

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 and Families Department (CYFD)
- Department of Public Safety (DPS)
- New Mexico Corrections Department (NMCD)
- New Mexico Sentencing Commission (NMSC)
- Public Defender Department (PDD)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to House Bill 45 replaces the word “hospital” with the more inclusive phrase “safe haven site” in subsection J of an existing provision of law that allows prosecution of a person who leaves an infant 90 days of age or less at such a site for abuse of the infant for actions occurring before the infant was left. The term “safe haven site” is defined in the Safe Haven for Infants Act to mean a hospital, law enforcement agency or fire station that has staff on-site at the time the infant is left. The amendment also makes stylistic changes that do not change the substance of the bill.

Synopsis of Original Bill

House Bill 45 amends Section 30-6-1 to make intentional abuse of a child resulting in death a first degree felony (which carries a life sentence) regardless of the child's age. Currently, life sentences are 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 (which carries a mandatory 18 year sentence).

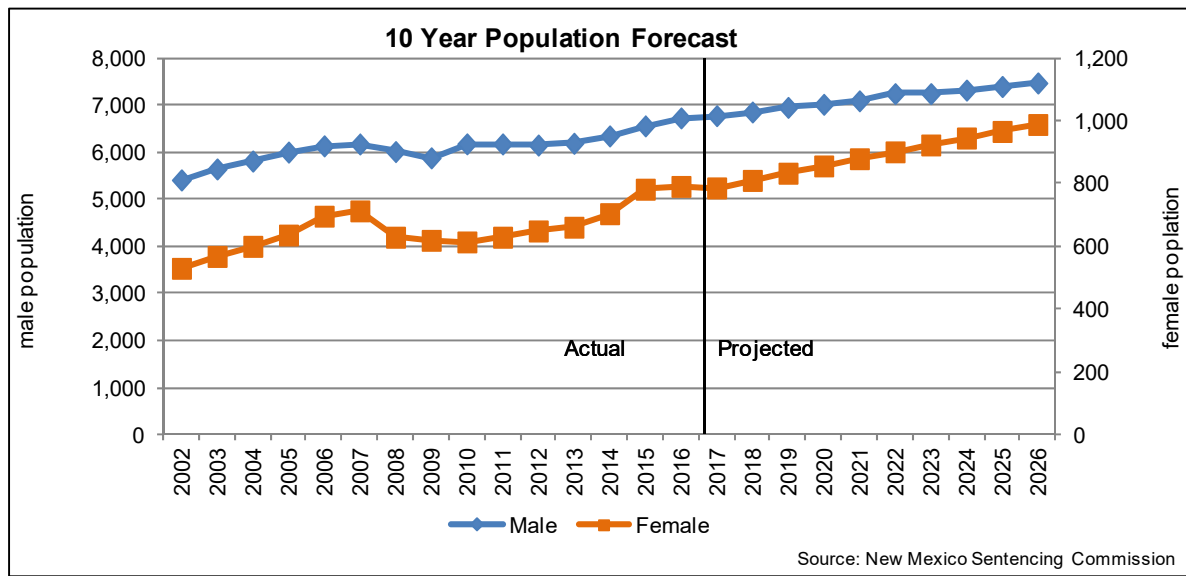
This bill contains an emergency clause.

FISCAL IMPLICATIONS

It is not possible to accurately score the fiscal costs of this bill because of the numerous variables involved: number of new convictions, age of the individual at conviction, age to which the individual will live, costs to incarcerate, medical costs, etc. Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. An increased 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, pushing the overall prison population higher. However, as the current sentence for this crime is 18 years, it will be that long before costs increase as a result of this bill. Using NMCD current estimate of \$44.8 thousand per year to confine a prisoner, costs will increase for the next twelve years of the sentence or an additional \$585.6 per prisoner convicted under the this bill.

NMCD's general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate's needs.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage, losses in future earnings and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.



No additional impact on the operating budgets for 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. Similarly, the AODA advises there is 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 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 states 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

CYFD provides this rationale for the change contained in HB 45:

Currently, intentional child abuse resulting in death of a child aged twelve or older is treated differently from abuse leading to the death of a child under twelve years of age. While both deaths result in first degree felony charges, only those offenders who intentionally abuse children younger than twelve are subject to the enhancement for abuse resulting in death. All children’s lives are equally as valuable and should be treated the same under the law. This bill treats the crime of intentional child abuse resulting in the death of the child the same, no matter the age of the child.

On the other hand, PDD comments:

Currently, intentional child abuse covers a wide range of acts involving any child under the age of eighteen and, in the endangerment context, requires the defendant to act with the conscious object of endangering the child. *State v. Granville*, 2016-NMCA-094, 384 P.3d 1121; NMSA 1978, §§ 30-6-1(A) (1) and 30-6-1(D) (1). The defendant does not need to act with the intent to kill, or even injure, or with a depraved heart as would be required for the defendant to be convicted of first degree murder. *See* NMSA 1978, §§ 30-2-1 (first and second degree murder). Thus, HB 45 would result in more people serving *life sentences* for conduct which is less culpable than that proscribed by the homicide statute 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. Moreover, unlike child abandonment, child abuse does not require that the person be a parent, guardian, or caregiver, so it applies to anyone.

In addition, 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 appreciate the distinction drawn in existing law, where 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. PDD suggests such reasoning is less applicable to teenaged children. Instead, it contends crimes against older children which result in death are more likely to resemble crimes against adults and PDD believes are already punishable under the homicide statutes, where guilt is fittingly linked to intent and dangerousness. *See* NMSA 1978, Sections 30-2-1 (first and second degree murder), 30-2-3 (manslaughter). In addition, it advises the disparity in punishment coupled with the relaxed standards of proof required to establish child abuse could give rise to some substantive due process and equal protection concerns, especially when the statute is applied to juvenile-on-juvenile crimes or crimes where the parties’ ages are comparable.

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

RELATIONSHIP

AOC reports that this bill relates to HB 13 and HB 54 which add additional crimes to the definition of “violent felony” in Section 31-18-23(E)(2), NMSA 1987 (the existing “three strikes” law). AGO comments that this bill also relates to SB 159, which makes the penalties for negligent abuse of a child the same as for intentional abuse of a child: if the abuse does not result in great bodily harm, a first offense is a third degree felony and subsequent offenses are second degree felonies. SB 159 also enhances the penalty for intentional abuse not resulting in great bodily harm to a second degree felony for the first offense and a first degree felony for subsequent offenses. Under that bill, intentional abuse resulting in great bodily harm remains a first degree felony.

TECHNICAL ISSUES

CYFD recommends Subsection C and J be amended to comply with the Safe Haven Act, which immunizes a parent from criminal prosecution for abandonment or abuse upon leaving an infant no more than 90 days old at a safe haven site. See Sections 24-22-1.1 and 3, NMSA 1978.

OTHER SUBSTANTIVE ISSUES

AGO comments that, while under existing law the sentence for a first degree felony resulting in the death of a child is life imprisonment, the New Mexico Supreme Court has held that a life sentence imposed for this type of felony is subject to mitigation up to one-third (or ten years) if appropriate because it is a noncapital felony. *State v. Cabezuela*, 2015-NMSC-016, 350 P.3d 1145; *State v. Montoya*, 2015-NMSC-010, 345 P.3d 1056; *State v. Juan*, 2010-NMSC-041, 148 N.M. 747.

NMSC provides this breakdown of admissions to the NM Corrections Department for great bodily harm or death of a child under the section of law being amended in this bill for fiscal years 2012 through 2016. Available data does not differentiate between convictions for death of a child due to abuse or great bodily harm not resulting in death:

FY12: 9 admissions
FY13: 8 admissions
FY14: 10 admissions
FY15: 5 admissions
FY 16: 12 admissions

MD/sb/jle/al