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FISCAL IMPACT REPORT

SPONSOR SJC DATE TYPED 3/17/2005 HB CS/166/aHJC
 SHORT TITLE Life Sentence for Deadly Child Abuse SB /aSFL#1
 ANALYST Peery

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			NA	NA	NA

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Response Received From

Administrative Office of the Courts (AOC)

Public Defender Department (PDD)

SUMMARY

Synopsis of SJC Amendment

The House Judiciary Committee amendment to the Senate Judiciary Committee Substitute for Senate Bill 166 strikes the Senate Floor Amendment 1. The amendment adds language that if abuse results in great bodily harm to a child, the person is guilty of first degree felony. The amendment also strikes line 9 through 19 on page three and adds a new subsection. The new subsection includes the following: whoever commits negligent abuse of a child that results in the death or the child is guilty of a first degree felony; whoever commits intentional abuse of a child twelve to eighteen years of age that results in the death of the child is guilty of a first degree felony; and whoever commits intentional abuse of a child less than twelve years of age that results in the death of the child is guilty of a first degree felony resulting in the death of a child. The amendment also removes references to the wording “human being” and replaces it with “child”.

Synopsis on SFL #1 Amendment

The first Senate Floor Amendment to Senate Bill 166 adds on page 3, between lines 8 and 9, the following “F. Whoever, commits negligent abuse of a child that results in great bodily harm to the child is guilty of a second degree felony.” The amendment calls for re-lettering of succeed-

ing sections. The amendment also calls for on page 3, line 9, the removing of “negligent or”. The amendment makes the distinction that those who commit negligent abuse of a child that results in great bodily harm to the child are guilty of a second degree felony, while those who commit intentional abuse of a child that results in great bodily harm to the child are, for a first offense, guilty of a second degree felony and for subsequent offenses are guilty of a first degree felony.

Synopsis of Original Bill

The Senate Judiciary Committee Substitute for Senate Bill 166 amends the Abandonment or Abuse of a Child statute, Section 30-6-1 NMSA 1978, to state an individual who commits negligent or intentional abuse of a child that results in great bodily harm to the child on the first offense is guilty of second degree felony and for the subsequent offenses guilty of first degree felony. The proposed legislation states whoever commits negligent or intentional abuse of a child that results in the child’s death is guilty of a first degree felony. The proposed legislation states for a first degree felony resulting in the death of a human being a basic sentence of life imprisonment. The defendant must serve 30 years before becoming eligible for parole. The proposed legislation also states for a first degree felony resulting in the death of a human being, the courts may impose a fine not to exceed \$17,500.

PERFORMANCE IMPLICATIONS

AOC reports the proposed legislation may have impact on the measures of the district courts in the following areas: cases disposed as a percent of cases filed, percent change in case filings by case type and clearance rate.

PDD reports the intentional child abuse cases resulting in death will be more difficult to try.

PDD states they are difficult to plea bargain because of the sentences involved. PDD states for child abuse resulting in great bodily harm, the cases may be slightly easier to resolve because of the decrease in penalty.

FISCAL IMPLICATIONS

A life sentence will contribute to a larger and older prison population. Costs will incur with an older prison population from geriatric services that include hospital care and disability accommodations.

AOC states there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

PDD states the increased sentence will increase the workload and expense of the Public Defender Department, as it includes not only child abuse but also those crimes that are first degree felonies that unintentionally result in death for a punishment of life in prison.

ADMINISTRATIVE IMPLICATIONS

AOC states the change to statute has the potential to increase the workload of courts, thus requiring additional resources to handle the increase.

CONFLICT, DUPLICATION, COMPANIONSHIP OR RELATIONSHIP

Duplicates and conflicts with Senate Bill 236 which is substantially identical except for the penalties.

OTHER SUBSTANTIVE ISSUES

AOC states the proposed legislation increases the penalty of the negligent or intentional abuse of a child. AOC reports that as potential penalty increases, the case becomes more complex and the defendant is more likely to contest the proceedings or request a jury trial. Time to resolution is likely to increase.

PDD states the proposed legislation suffers from the same problem as current law in that it makes no distinction between people who have no intent and no knowledge of the abuse, and the abuser. PDD states it treats people who are caretakers but are not present when the abuse happens as harshly as the intentional abuser. PDD reports the proposed legislation does not distinguish between the person who intentionally causes great bodily harm and the person who negligently permits it.

PDD states the Child Abuse statute is one of the most broadly-reaching statutes in that it covers the person who is not present when the abuse takes place under the theory of “negligently permitting” the abuse to happen. PDD states this proposed legislation would allow people convicted of “permitting” another to have access to a child, and that other person unintentionally causes death, to be sentenced to 9 years in prison. PDD reports the proposed bill affects poor working women most harshly. PDD states it is the poor working mothers who are forced to leave their young children with their partners and extended family while they work.

PDD reports the Child Abuse statute also covers situations that are not necessarily abuse. PDD reports the statute includes a negligence standard of knew or should have known that is close to civil negligence. PDD states the courts have not made the distinction that seems to be in the definition that a person must actually know of the risk before it can be disregarded.

ALTERNATIVES

PDD suggests the alternative of overhauling the Child Abuse statute to make clear penalty distinction between negligently permitting, negligence and intentional abuse.

RLP/yr:lg