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## FISCAL IMPACT REPORT

SPONSOR Garcia DATE TYPED 2/10/05 HB \_\_\_\_\_

SHORT TITLE Increase Deadly Child Abuse Penalties SB 236

ANALYST Wilson

### APPROPRIATION

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

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorney's (AODA)

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

Corrections Department (CD)

Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 236 increases the penalty for abuse of a child that results in the child's death. Current law states that "if the abuse results in great bodily harm or death to the child, he is guilty of a first degree felony." This bill proposes to separate the penalty for great bodily harm from abuse resulting in death to the child for children who are less than twelve years of age.

- The proposed penalty for a person who commits abuse of a child who is twelve years of age or older that results in great bodily harm or death to the child is guilty of a first degree felony.
- The proposed penalty for a person who commits abuse of a child who is less than twelve years of age that results in great bodily harm to the child is guilty of a first degree felony.
- The proposed penalty for a person who commits abuse of a child that results in the child's death is guilty of a first degree felony resulting in the death of a human being.

- Because of this proposed separation of penalties, the bill also adds another basic sentence of imprisonment: if a person is convicted of a noncapital felony, the basic sentence of imprisonment for a first degree felony resulting in the death of a human being is 26 years imprisonment.
- The appropriate basic sentence of imprisonment shall be imposed upon a person convicted of a first, second, third or fourth degree felony or a first, second or third degree felony resulting in the death of a human being, unless the court alters such sentence.
- The court shall include in the judgment and sentence of each person convicted of a first, second, third, or fourth degree felony or a first, second or third degree felony resulting in the death of a human being and sentenced to imprisonment in accordance to the law.
- A court, in addition to the imposition of a basic sentence of imprisonment, to impose a fine not to exceed \$17,500 for a first degree felony resulting in the death of a human being.

#### Significant Issues

The AGO provided the following:

Currently, a case involving abuse of a child can be charged as murder in the first degree if there was deliberate premeditation, or if the murder was committed during the commission of any felony, or if the murder was committed by any act greatly dangerous to the lives of others. If a defendant is convicted of murder in the first degree, he faces life imprisonment, with a minimum of a 30 year sentence, or the death penalty.

The bill provides that a murder committed during the commission of a felony is a capital crime. The state legislature has designated the child abuse statute as a more specific statute pertaining to the homicide of children. One concern with the proposed bill, therefore, may be that due to the similarity of the two statutes a court may find that the Abuse of a Child statute is the more specific statute for first degree felony crimes involving children, thereby precluding prosecutors from charging a child abuse case as first degree murder where the facts permit. To date, the current child abuse statute has not been challenged in this manner. One important distinction is that first-degree homicide is a capital crime, as opposed to the first-degree felony proposed here. In any event, it is possible this bill could have the adverse effect of limiting prosecutions of child abuse cases resulting in death to only a 26-year maximum term, instead of the currently provided 30-year life term.

As the bill is written, the death of a child under eleven years old would qualify as an additional aggravating factor. There is some duplication in the proposed amendment with the existing aggravating circumstances. Depending on the particular facts, if the murder was committed with the intent to kill or in the commission of or attempt to commit kidnapping, criminal sexual contact of a minor or criminal penetration, the aggravating factor already exists.

It is unclear why the amendment proposes the additional aggravating circumstances for a

child 'less than twelve years' of age. First degree felony for CSP of a minor protects a child under thirteen years of age. As the proposed amendment is written, children age 12 years through 17 who are victims of child abuse resulting in death are excluded from the 26 year penalty.

The PDD offered the following:

While there is a need for complete overhaul of the Child Abuse statute, this bill suffers from the same problem as does the current law—it makes no distinction between people who have no intent and no knowledge of the abuse, and the abuser himself. It treats people who are caretakers but are not present when abuse happens such as the mom who leaves the child with boyfriend while she goes to work as harshly as the intentional abuser—in the case of this bill, imposing a 26-year prison sentence.

### **FISCAL IMPLICATIONS**

It should be noted that as penalties increase, potential imprisonment tends to inspire defendants to retain attorneys and demand jury trials. Indigent defendants are entitled to public defender services.

Adding another basic sentence of imprisonment for a first degree felony resulting in the death of a human being may take up a considerable amount of judicial time because the district courts have to conduct not only a trial, but a sentencing phase as well. There may be an increase in the amount of work that needs to be done by the courts, thus requiring additional resources needed to handle the increase.

The bill will increase costs to the CD in later years to a minimal to moderate degree as a result of the longer prison sentences and longer probation terms.

### **ADMINISTRATIVE IMPLICATIONS**

There is an administrative impact on the court resulting from added judicial time needed to dispose of these types of cases in the manner provided under the law.

### **TECHNICAL ISSUES**

The AGO notes that SB 236 proposes a new classification of homicide; death resulting in a human being under twelve years old. As written, the new category is added to Section 31-18-15, however this new category is not reflected in Section 31-20-3. Section 31-20-3 excludes first degree felony crimes from a court granting a deferred or suspended sentence. Since this a new category of a first degree felony, the new category should be included in 31-20-3 to ensure the 26 year penalty is granted, or language should be added to this proposed bill exempting if from the provision of 31-20-3.

**DW/sb**