

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

## FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13

SPONSOR Strickler LAST UPDATED \_\_\_\_\_ HB 265

SHORT TITLE Voluntary Manslaughter Youthful Offender SB \_\_\_\_\_

ANALYST Daly

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with HB 142.

### 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)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)

#### Response Not Received From

Children, Youth & Families Department (CYFD)

### SUMMARY

#### Synopsis of Bill

House Bill 265 (HB 265) amends the Criminal Sentencing Act and the Delinquency Act of the Children’s Code to add the offense of voluntary manslaughter to the current list of thirteen predicate offenses for a “youthful offender”.

The bill also adds aggravated battery against a household member as a predicate offense for a youthful offender under the Criminal Sentencing Act. (It is already listed as a predicate offense in the Delinquency Act.)

## **FISCAL IMPLICATIONS**

The AODA predicts the fiscal impact of this bill will be minimal, since adding voluntary manslaughter as an offense that subjects a child to youthful offender status will likely cause a only a small increase in the number of cases. Because a youthful offender is entitled to an amenability hearing prior to sentencing, as the PDD notes, representation of the child is necessary beyond a delinquency adjudication and disposition. Additionally, the comments that while it is likely that that department would be able to absorb the cost of representation under the proposed law, any increase in the number of prosecutions of children as quasi-adults will bring a concomitant need for an increase in indigent defense funding. The AOC believes that adding another youthful offender offense may cause more litigation and increases in court time and resources. The NMCD advises that it is likely that none or only a minimal number of additional youthful offenders will be sentenced to serve an incarceration period in NMCD custody or placed on adult probation/parole supervision as a result of this bill, and the fiscal impact on the NMCD would be minimal.

## **SIGNIFICANT ISSUES**

The NMSC reports that a youthful offender is a delinquent child who is 14 to 18 years of age at the time of committing one of the predicate offenses which is the basis for classifying the child as a youthful offender and subjecting the child to either adult or juvenile sanctions. The list of those predicate offenses are set forth in the Criminal Sentencing Act and the Children’s Code, and HB 265 expands that listing to include voluntary manslaughter. A youthful offender who receives a juvenile disposition may be subject to extended commitment in the care of the CYFD until the age of 21. A youthful offender who receives an adult sentence is committed to the custody of the NMCD. The adult sentence upon conviction for the offense of voluntary manslaughter is six years imprisonment.

The PDD argues against the inclusion of voluntary manslaughter as a youthful offense. Because the legislature never intended for manslaughter to be punished as murder, the PDD believes it should not then equate the two for the purpose of subjecting children to adult punishment.

As the PDD explains:

with the exception of second-degree murder, which is a general intent crime, the youthful offender offenses codified in the Delinquency Act of the Children’s Code and Criminal Sentencing Act are specific intent crimes. Voluntary manslaughter, like second-degree murder, is a general intent crime. However, New Mexico defines manslaughter as “[t]he unlawful killing of a human being without malice. . . [v]oluntary manslaughter consists of manslaughter committed upon a sudden quarrel or in the heat of passion.”, § 32-2-3 NMSA 1978 (1963). In contrast, “[u]nless he is acting upon sufficient provocation, upon a sudden quarrel or in the heat of passion, a person who kills another human being without lawful justification or excuse commits murder in the second degree if in performing the acts which cause the death he knows that such acts create a strong probability of death or great bodily harm to that individual or another.”, § 30-2-1 (B) NMSA 1978 (1963).

The New Mexico Supreme Court has examined New Mexico’s homicide statutes and concluded that the difference between manslaughter and murder is malice. “Malice” is “an intent to kill or an intent to do an act greatly dangerous to the lives of others.” A verdict of voluntary manslaughter requires an affirmative finding that “malice” is not present. A verdict of guilty of manslaughter by the jury, then, is a finding that there were mitigating circumstances making the accused less culpable.

### **ADMINISTRATIVE IMPLICATIONS**

According to the NMCD, there would appear to be little or no performance implications for NMCD prison staff, who already have gained experience and expertise over the years in working with youthful offenders sentenced as adults and sent to serve prison time in NMCD custody. The bill also is likely to have little or no impact on probation and parole caseloads or staff.

### **OTHER SUBSTANTIVE ISSUES**

The NMCD reports that the number of juvenile offenders in NMCD custody has historically been very low (an average of one to four such offenders in NMCD custody/incarceration most of the time), and juvenile judges historically have been very reluctant to send juveniles to NMCD prisons. Juvenile court judges also historically have not placed juvenile offenders on adult probation.

The PDD advises that aggravated battery on a household member was added to the definition of youthful offender in the Delinquency Act on July 1, 2009. As to that predicate offense, HB 265 simply seeks to bring the Criminal Sentencing Act up to date and make it consistent with the definition in the Delinquency Act.

MD/bm