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## FISCAL IMPACT REPORT

ORIGINAL DATE  
**SPONSOR** SPAC **LAST UPDATED** 03/10/15 **HB** \_\_\_\_\_

**SHORT TITLE** Domestic Violence Suffocation & Strangulation **SB** 513/SPACS

**ANALYST** Daly

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		>\$176.19	>\$144.245	>\$320.43	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB 497, HB 582 and SB 408.

### SOURCES OF INFORMATION

LFC Files

### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Administrative Office of the Courts (AOC)  
 Attorney General's Office (AGO)  
 Children, Youth & Families Department (CYFD)  
 Department of Public Safety (DPS)  
 New Mexico Corrections Department (NMCD)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

The Senate Public Affairs Committee substitute for Senate Bill 513 amends the Crimes Against Household Members Act (CAHMA) to:

- Define strangulation to mean the unlawful touching or application of force to another person's neck with intent to injure that person, the result of which impedes the person's normal breathing or blood circulation;
- Define suffocation to mean the unlawful touching or application of force that blocks the nose or mouth of another person with the intent to injure that person, the result of which impedes the person's normal breathing or blood circulation; and
- Expand the crime of aggravated battery against a household member to include batteries inflicting strangulation or suffocation of a household member, which are fourth degree felonies.

In addition, the bill amends the Abuse and Neglect Act and the Family Violence Protection Act (FVPA) to include these same definitions of strangulation and suffocation in the definitions of physical abuse and domestic abuse. Section 3 also amends the definition of youthful offender in the Delinquency Act to include third degree aggravated battery of a household member (as defined in the relettered Subsection D in Section 1 which amends CAHMA) to the list of delinquent acts that may result in adult sanctions upon adjudication as a delinquent child if the child is fourteen to eighteen year of age that the time of the offense.

The effective date of this bill is July 1, 2015.

## **FISCAL IMPLICATIONS**

AODA reports that, in light of the reduction in classification (and penalty) from third to fourth degree felony, they will face more litigation in attempting to prosecute these cases under either the general aggravated battery statute, or as attempted murder when the facts so require, in order to seek the original, higher penalty. This will result in fiscal impact on District Attorney budgets, as well as those of the courts and PDD.

PDD also reports potentially significant fiscal impact because it contends the new definitions of strangulation and suffocation upon which the new fourth degree felony is based do not require actual physical harm. Cases under this new felony will be brought in district court rather than metropolitan or magistrate courts, which it advises will require, at its conservative estimate, five new intermediate, experienced attorneys and two more investigators, for start-up cost of \$89,355 for attorneys and \$58,889 for investigators and recurring costs of \$86,855 and \$56,390, respectively.

NMCD anticipates only a small number of individuals will be convicted of the new further degree felony created in this bill, which likely will lead to a minimal to moderate increase in the inmate population and probation/parole caseloads. The average cost to incarcerate a male inmate is \$43,603 per year in a state-owned and operated prison, and the average annual cost in a privately operated prison is \$29,489 (where primarily only level III or medium custody inmates are housed). The cost per client in Probation and Parole for a standard supervision program is \$2,783 per year. The cost per client in Intensive Supervision programs is \$2,563 per year. The cost per client in Community Corrections is \$3,664 per year. The cost per client per year for female residential Community Corrections programs is \$27,412 and for males is \$18,100. Offenders placed on probation for the crimes covered by this bill seem likely to be immediately or eventually placed on standard supervision.

Because of the variously reported fiscal impacts, the estimates provided by the PDD appear in the operating budget impact table above, with the “>” sign representing the additional impact on the District Attorneys, the courts and NMCD.

## **SIGNIFICANT ISSUES**

CYFD provides this background on strangulation:

Strangulation is a predictive risk factor for future severe domestic violence and for homicide. Wilbur et al., 2001; Sheridan & Nash, 2007. It is a significant concern as it frequently impacts the physical health of the victim: there are often no visible injuries

yet there can be internal injuries causing long-term effects. In 300 cases of domestic violence reviewed in a 2001 study, almost all victims were women and almost all of the perpetrators were their current or former partners. Strack, McClane, and Hawley (2001).

One conclusion of this study was that police needed improved training to recognize strangulation and that “strangulation is a form of power and control that can have devastating psychological long-term effects on its victims in addition to a potentially fatal outcome”. Almost half of all domestic violence homicide victims had experienced at least one episode of attempted strangulation prior to a lethal or near-lethal violence incident (Glass & Sage, 2008). Strangulation is often misunderstood or misidentified as something less serious. Turkel (2007). Strangulation cases are minimized by law enforcement, medical, and mental health professionals since most victims do not have visible injuries. (Gwinn & Strack, 2011). This study also found that juries and judges have difficulty understanding the serious nature of the crime without clear guidance in the law and from expert witnesses and professionals with specialized training.

AGO reports that, according to the Wisconsin Medical Journal, strangulation accounts for 10 per cent of all violent deaths in the United States.

AODA reports that District Attorneys currently prosecute suffocation and strangulation cases as third degree felonies as a means by which great bodily harm or death could have resulted. They do so for cases involving household members, whom this bill addresses, and also in “regular” aggravated batteries against individuals with no such relationship. Currently (and for decades past) for both categories, the penalty is a third degree felony.

However, AODA expresses concern that CS/SB 513:

drops the penalty to a fourth degree felony for aggravated batteries against household members, which undercuts this legislature’s long push to hold domestic violence offenders accountable for their crimes. By medical definition, these acts occur to the point where the victim falls unconscious (at least), which is a sign that oxygen has been cut off to the brain and brain cell death is underway. Strangulation beyond unconsciousness can result in irreparable harm and death within seconds; suffocation beyond unconsciousness can result in death within minutes.

Thus, AODA suggests that aggravated battery caused by strangulation or suffocation causes great bodily harm and could lead to death; to reduce the degree (and thus the penalty) from third to fourth degree felony and is a grave step backwards. It goes on to point out:

In contrast, the bill leaves alone Section 30-3-5C, the main aggravated battery with great bodily harm statute, which will still be used in prosecuting suffocation and strangulation cases of other (non-household member) victims, and which remains a third degree felony. Because District Attorneys are bound, under the law, to prosecute crimes under the more specific statute, they will be forced to use the statute with the lower penalty in domestic violence situations. Possibly, if circumstances allow, district attorneys could attempt to prosecute these cases under attempted murder, but that will require more legal argument in court, both at the trial and the appellate level, to convince the courts that these cases are far more serious than as represented by this new statute, and that the statute is insufficient to address these cases such that prosecution for the higher offense is warranted.

Third degree felonies carry a three year term of imprisonment (in contrast, fourth degree felonies result in 18 months of incarceration), but an offender can be placed on probation in lieu of incarceration. If an offender is incarcerated in a NMCD prison, a third degree felony carries a two year parole term as well.

PDD provides this analysis of CS/SB 513, focusing on the new definitions of strangulation and suffocation and the new fourth degree felony aggravated battery that includes those terms as elements of the crime:

The language “impedes the person’s normal breathing or blood circulation” is not defined. Laughter impedes a person’s normal breathing - would an unwanted tickling be now charged as a fourth-degree felony? While it is likely that notable impediment is what is intended by the drafters, the lack of precision could be problematic if a prosecutor argued the crime would not require any actual physical harm beyond the momentary interference with breathing. Felony charges for minimal cases could result in challenges for cruel and unusual punishment. This could easily be resolved with the addition of a word (“*notable*”, “*dangerous*” or “*substantial*”) to describe the necessary impediment of breathing required to sustain a felony conviction.

PDD goes on to comment, suggesting ultimately the same result that leads to AODA’s concerns:

It should be noted that the law already criminalizes this behavior: any interruption in breathing is a battery (petty misdemeanor under section 30-3-4 NMSA 1978); a more serious interruption is an aggravated battery (misdemeanor or third degree felony at section 30-3-5 NMSA 1978); and a very serious interruption would be charged as an attempted murder (second degree felony at section 30-2-1 NMSA 1978). Under existing law, any strangulation or suffocation done in such a way that great bodily harm could be inflicted is a third degree felony. However, due to the general/specific rule of statutory interpretation, see *State v. Cleve*, 1999-NMSC-017, 127 N.M. 240, enactment of the proposed legislation would lead to challenges that such could henceforth only be charged as lesser fourth degree felonies.

As to the other provisions of CS/SB 513, AOC points out that including strangulation and suffocation within the definition of physical abuse which in turn defines an abused child under the Abuse and Neglect Act makes available the remedies and procedures within that act to a child who has been strangled or suffocated, such as placing a child in CYFD custody or other placement options and development of a treatment plan that serves the child’s best interests. See Sections 32A-4-2 and 32A-4-25.3, NMSA 1978. Similarly, the amendment to the FVPA, which includes strangulation and suffocation within the acts that constitute domestic violence, makes the remedies and procedures provided under that act available to household members who have experienced such violence, including orders of protection. See Section 40-13-3, NMSA 1978.

## **RELATIONSHIP**

This bill relates to SB 408 (amending the definitions section of the FVPA to add a definition of “predominant”, HB 497 (reconciling differences in the definition of “household member” in the Crimes Against Household Members Act, the Family Violence protection Act and the Criminal Procedure Act), and HB 582 (also amending Section 32A-4-2, the definitions section of the Abuse and Neglect Act).

**OTHER SUBSTANTIVE ISSUES**

PDD reports that underscoring the present system’s awareness of the seriousness of such acts, any strangulation battery charge in the Second Judicial District is not permitted to be handled by pre-prosecution diversion programs in acknowledgement of studies relating the seriousness of such behavior.

AGO reports that, according to a national expert on this topic, Gael Strack, CEO of the National Family Justice Center in San Diego, California, as little as 10 seconds of pressure on the carotid arteries in the neck is enough to deprive the brain of oxygen and cause someone to lose consciousness. If the pressure continues, brain death can occur in as quickly as five minutes. Additionally, the AGO cites a 2008 study in the Journal of Emergency Medicine that suggested the risks of an attempted homicide increase about sevenfold for women who have been strangled by their partner. The study also found that 43 per cent of women murdered in domestic assaults, and 45 percent of victims of attempted murder, had been strangled by a partner in the previous year.

**AMENDMENTS**

PDD suggests a change in the definitions of strangulation and suffocation to require “notable”, “dangerous”, or “substantial” impediment of breathing, which it believes may better serve the intended purpose of this bill.

MD/bb