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FISCAL IMPACT REPORT

SPONSOR Gould **ORIGINAL DATE** 01/29/17
LAST UPDATED 02/09/17 **HB** _____

SHORT TITLE Increase Crimes Against Children Penalties **SB** 159/aSPAC

ANALYST Klunt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$45.3 per inmate for each additional in custody	\$45.3 per inmate for each additional in custody	\$135.9 per inmate for 3 additional years in custody	Recurring	Corrections Department operating budget
		Indeterminate	Indeterminate	Indeterminate	Recurring	DA, PDD, Courts operating budgets

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

Administrative Office of the Court (AOC)

Attorney General’s Office (AGO)

Department of Public Safety (DPS)

SUMMARY

Synopsis of SPAC Amendment

SPAC amendment to SB 19 strikes “younger” on page 2, line 15, and inserts “no more” so that the line reads

Synopsis of Bill

SB 159 amends Section 30-6-1 NMSA 1978 by distinguishing the penalties for intentional abuse of a child and negligent abuse of a child, as follows:

- Intentional abuse of a child that does not result in death or great bodily harm is a second

degree felony for the first offense.

- Intentional abuse of a child that does not result in death or great bodily harm is a first degree felony for every subsequent offense.
- Negligent abuse of a child that does not result in death or great bodily harm is a third degree felony for the first offense.
- Negligent abuse of a child that does not result in death or great bodily harm is a second degree felony for every subsequent offense.
- Both Intentional and Negligent abuse of a child resulting in death is a first degree felony.

SB 159 also amends Section 30-6-1(L) to clarify that a person who leaves an infant 90 days old or younger at a safe haven site may be prosecuted for abuse of the infant for actions of the person occurring before the infant was left at the safe haven site.

The effective date of the Act is July 1, 2017.

FISCAL IMPLICATIONS

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer 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.

The AOC reported any additional fiscal impact to the judiciary would be proportional to the enforcement of this law and the 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.

There is no appropriation included in this bill; no additional impact on the operating budgets for the Children, Youth and Families Department (CYFD) was reported.

The AODA previously reported a possibility of fiscal impact for District Attorney's Offices statewide for additional prosecutorial resources.

The PDD previously reported the proposed change in punishment is not likely to increase caseloads; however significantly increasing penalties 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 stated 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

The AOC reported this bill separates out and increases the penalties for intentional child abuse not resulting in death or great bodily harm from what is currently called abuse not resulting in death or great bodily harm. The amended language in Section 30-6-1(E) adds the term “negligent” before the term “abuse,” thus creating a section for negligent abuse and another section for intentional abuse. The purpose of HB 68 is to enact increased penalties for intentional child abuse. However, in adding the word “negligent” in Subsection (E), HB 68 is likely to perpetuate confusion that has existed in both case law and the Rules for Uniform Jury Instructions. This issue has been the subject of two recent NM Supreme Court cases, *State v Consaul* and *State v Montoya*.

In *State v Consaul*, 2014-NMSC-30, the NM Supreme Court expressly overruled prior case law regarding criminal child abuse stating that, “...what has long been called criminally negligent child abuse should be hereafter labeled reckless child abuse without any reference to negligence.” *State v Consaul*, 2014-NMSC-30, ¶37, 332 P.3d 850. *Consaul* explains the Court’s history of discomfort with language often associated with civil negligence used in the context of criminal negligence. The Court specifically mentions Section 30-6-1(A)(3) and the phrase “knew or should have known,” concluding that the legislature must have “intended the term ‘reckless disregard’ to prevail when ‘knew or should have known’ conflicts.” *Id.* ¶40.

In *State v Montoya*, 2015-NMSC-10, the New Mexico Supreme Court reiterated its holding in *Consaul*, stating that, “...thus we now expressly adopt the same rule that ‘criminally negligent child abuse’ should hereafter be labeled ‘reckless child abuse’ without any reference to negligence.”

In addition, AOC reported SB 159 reflects that, pursuant to the Safe Haven for Infants Act, Section 24-22-1 NMSA 1978 *et seq.*, an infant may be left at a safe haven site. Section 24-22-2(F) defines a "safe haven site" to mean a hospital, law enforcement agency or fire station that has staff on-site at the time an infant is left at such a site.

CYFD stated negligent abuse of a child and intentional abuse of a child are different with regard to the mindset of the offender. To be convicted of negligent child abuse, it must be proven that the defendant acted with reckless disregard for the safety and health of the child. This is more than mere negligence or carelessness, but does not rise to the level of intentional conduct. Reckless disregard is defined as causing or permitting a substantial and unjustifiable risk of serious harm to the safety or health of the child. (14-612 NMRA) A person acts intentionally when they purposefully do the criminal act. (14-141 NMRA) This bill changes the penalty to match the level of the defendant’s culpability by increasing the degree of felony when the abuse is done intentionally.

PERFORMANCE IMPLICATIONS

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
- Percentage change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

AOC reported the following:

- These cases may increase the workload for court staff as well as judges.
- Appeals of conviction may also require increased court staff and judicial time.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 45 conflicts with SB 159 because it does not distinguish between intentional and negligent child abuse penalties, whereas SB 159 creates that distinction.

HB 45 amends NMSA 1978 Section 30-6-1(G-H) by removing age distinctions, increasing the penalty for intentional abuse of a child that results in death a first degree felony resulting in life imprisonment regardless of age. SB 159 leaves the age distinction penalties intact.

HB13 (“Three Strikes Law”) cites subsections E, F, G, and H of § 30-6-1. Those citations would have to be adjusted if the subsections are reordered as proposed in SB159.

TECHNICAL ISSUES

AOC suggest amending 30-6-1 to reflect the recent NM Supreme Court decisions by replacing the word “negligent” in Section 30-6-1 with the word “reckless” wherever it appears. Replace the definition of negligently in Section 30-6-1(A)(3) with reckless

“negligently” refers to criminal negligence and means that a person knew or should have known of the danger involved and acted with a reckless disregard for the safety or health of the child.	“reckless” means to consciously disregard a substantial and unjustifiable risk of such a nature and degree that its disregard involves a gross deviation from a reasonable standard of conduct.
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AGO suggested, to be consistent with the definition of “infant” found at § 24-22-2(D) of the Safe Havens for Infants Act, § 30-6-1(C) should use the term “no more than ninety days old” rather than “less than” or “younger than” ninety days old. Otherwise, § 24-22-2(D) covers children who are exactly 90 days old, but § 30-6-1(C) does not. (SB159 does amend reordered subsection L to say “no more than ninety days old.”)

OTHER SUBSTANTIVE ISSUES

AGO stated by its terms, reordered subsection L applies to both negligent and intentional abuse, insofar as it provides that “[e]vidence that a child has been knowingly, intentionally or negligently allowed to enter or remain in a motor vehicle, building or any other premises” shall be deemed “prima facie evidence of abuse of the child” under certain circumstances. By contrast, reordered subsection K provides that “evidence that demonstrates that a child has been knowingly or intentionally exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.” If evidence that a child was *negligently* exposed to use of methamphetamine also is meant to be deemed prima facie evidence of abuse, this subsection should be appropriately amended.