

LFC Requester:	
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**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:
Original **Amendment**
Correction **Substitute**

Date Jan. 17, 2018
Bill No: SB61

Sponsor: Daniel Ivey-Soto
Short Title: Add Domestic Violence Definitions

Agency Code: 264
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		
0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		
0	0	0	n/a	n/a

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	minimal	minimal	minimal	recurring	general

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: HB40
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB61 adds the following definitions of “suffocation” and ‘strangulation” to the Family Violence Protection Act, the Crimes Against Household Members Act and the Abuse and Neglect Act:

“Suffocation” is the unlawful touching or application of force that blocks the nose or mouth of another person with intent to injure that person, the result of which impedes the person’s normal breathing or blood circulation.

“Strangulation” as the unlawful touching or supplication of force to another person’s neck or throat with intent to injure that person, the result of which impedes the person’s normal breathing or blood circulation.

In the Crimes Against Household Members Act, SB61 amends the provision on aggravated battery against a household member (NMSA 1978, Section 30-3-16) to make aggravated battery against a household member a third degree felony if it is committed by strangulation or suffocation.

In the Abuse and Neglect Act, SB61 amends the definition of “physical abuse” to include cases in which the child suffers strangulation or suffocation. NMSA 1978, Section 32A-4-2(H).

In the Family Violence Protection Act, SB61 amends the definition of “domestic abuse” to specifically include an incident by a household member against another household member consisting of or resulting in strangulation or suffocation. NMSA 1978, Section 40-13-2(D).

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SB61 should make it easier to prosecute domestic violence crimes involving strangulation or suffocation, and may increase the number of cases brought.

SIGNIFICANT ISSUES

According to the Training Institute on Strangulation Prevention, strangulation is one of the most lethal forms of domestic violence and sexual assault; unconsciousness may occur within seconds and death in minutes. Strangulation is a powerful tool used by perpetrators to control their victims and can have a devastating psychological impact on the victim. Seventy percent of strangled women believed they were going to die. And, in fact, strangulation is one of the best predictors for the subsequent homicide of victims of domestic violence. Victims who survive a strangulation assault may have no visible injuries but because of underlying brain damage due to the lack of oxygen during the strangulation assault, they may have serious internal injuries or die days or even weeks after the event. Forty five states have legislation specifically addressing strangulation assaults. See www.strangulationtraininginstitute.com.

New Mexico is one of the few states that does not have laws specifically addressing strangulation and suffocation. Prosecutors in New Mexico must prosecute such cases under existing general laws on battery, domestic violence and child abuse, but the language in those statutes may not fit strangulation and suffocation scenarios.

For example, New Mexico's child abuse statute (NMSA 1978, Section 32A-4-2) defines "physical abuse" in terms of specific physical consequences: skin bruising, bleeding, malnutrition, failure to thrive, burns, fracture of any bone, subdural hematoma, soft tissue swelling or death. If a suffocation does not result in bruising, swelling, a subdural hematoma or death, it is not "physical abuse" under New Mexico statutes.

Similarly, New Mexico's Family Violence Protection Act defines "domestic abuse" as stalking or sexual assault, or an incident consisting of certain actions or resulting in specific consequences. NMSA 1978, Section 40-13-2. Because strangulation and suffocation are not currently identified as actions constituting "domestic abuse," a prosecutor would have to prove that the strangulation or suffocation resulted in one of the specific consequences listed, such as severe emotional distress or bodily injury or assault. Because a strangulation/suffocation attack may leave little or no visible injuries, and the victim may be too afraid of the perpetrator to testify to extreme emotional distress, prosecution can be difficult.

The same sort of issue arise under the Crimes Against Household Members Act. For example, for a strangulation battery to be prosecuted under NMSA 1978, Section 30-3-16, Aggravated Battery Against a Household Member, the prosecutor must prove that the perpetrator inflicted an injury (which may be difficult to prove in a strangulation case) and that the injury is not likely to cause death or great bodily harm (generally not true in a strangulation case), but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body. If the prosecution meets that burden, however, the crime is only a misdemeanor. For the crime to rise to the third degree felony of aggravated battery against a household member, the prosecutor must prove great bodily harm or that the battery was committed in a manner whereby great bodily harm or death can be inflicted. Again, juries may not understand the potential for great bodily harm or death in strangulation and suffocation batteries.

SB61 recognizes the seriousness of strangulation and suffocation. It defines them in terms of their impact on a person's normal breathing or blood circulation. It amends the definitions in the Abuse and Neglect Act to include strangulation or suffocation as "physical abuse," putting it on an equal level with other specific examples of physical abuse. SB61 also amends the Family

Violence Protection Act to specifically include strangulation and suffocation in the list of incidents identified as “domestic abuse.” It amends Section 30-3-16 of the Crimes Against Household Members Act to create a third degree felony of aggravated battery against a household member by strangulation or suffocation.

PERFORMANCE IMPLICATIONS

Including strangulation and suffocation in the definitions of crimes under the Crimes Against Household Members Act, the Abuse and Neglect Act, and the Family Violence Protection Act will make crimes involving strangulation and suffocation easier to prosecute.

ADMINISTRATIVE IMPLICATIONS

Jury instructions for the affected criminal statutes will need to be revised.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB40 provides for training on strangulation in domestic abuse.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

None proposed.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Attacks involving strangulation or suffocation will continue to be difficult or impossible to prosecute under the Abuse and Neglect Act, the Crimes Against Household Members Act, and the Family Violence Protection Act.

AMENDMENTS

None proposed.