

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. 15, 2018
Bill No: SB 38

Sponsor: Howie C. Morales
Short Battery of CYFD Workers
Title: _____

Agency Code: 264
Person Writing Gary Cade
Phone: 505-507-7752 **Email** cadeabq@gmail.com

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(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						

(Parenthesis () Indicate Expenditure Decreases)

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

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: SB38 would add employees of the children, youth and families department (“CYFD”) to the list of other special groups of persons that offenders would receive enhanced penalties for the commission of assault, aggravated assault, battery or aggravated battery if the “public service worker” was in the performance of their duties when the crime(s) was/were committed. Assault of a CYFD worker would be a misdemeanor; aggravated assault of a CYFD worker would be a third degree felony; battery of a CYFD worker would be a fourth degree felony; and aggravated battery of a CYFD worker would be a third degree felony. In addition, anyone “...who assists or is assisted by one or more other persons to commit a battery...” of a CYFD worker would be guilty of a fourth degree felony.

FISCAL IMPLICATIONS

Unknown. Because of the increased penalties, it is likely that more criminal cases will be litigated, especially if the offense charged is a felony which carries the potential of incarceration in the department of corrections, being charged as a habitual offender and loss of certain rights, e.g. voting and possession of a firearm, in addition to an increased stigma for being convicted of a felony. That could contribute to a need for more judges, prosecutors, public defenders and corrections personnel.

SIGNIFICANT ISSUES

SB 38 protects a “public service worker” which is defined as an employee of CYFD “...who works directly with children and families in either the protective services division or juvenile justice division of [CYFD]...” and lists 14 different types of employees. It also includes “...any person authorized to transport clients for the department.” The person must be in the “lawful discharge” of their duties for CYFD for the proposed statute to apply.

SB 38 is similar, but not identical to, statutes for other groups of persons—school personnel, sports officials, and health care personnel—that have increased penalties for the crimes of assault, aggravated assault, battery and aggravated battery when those persons are victimized while in the lawful performance of their duties. Cf., Sec. 30-3-9, Sec. 30-3-9.1, and Sec. 30-3-9.2, NMSA 1978. Each of those statutes provide that if the victim receives an injury that is not likely to cause death or serious injury but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the body, the crime is a fourth degree. That alternative, for less serious injuries to CYFD workers, is missing from SB 38 as drafted.

SB 38 provides that anyone who assists or is assisted by one or more other persons to commit a battery of a CYFD battery is guilty of a fourth degree felony. Similar language is present in the statutes regarding school personnel and health care personnel but is not present in the statute involving sports officials. That difference may be present because most sports officials wear a distinctive uniform and work in public events, unlike school personnel and health care personnel.

Knowledge of the victim's status is an essential element of the statutes that provide increased punishment for crimes against persons in one of the special groups listed. See, e.g., *State v. Valino*, 2012—NMCA—195 (“...knowledge of the victim's identity as a health care worker is an essential element of battery on a health care worker.”) and *State v. Nozie*, 2009—NMSC—018 (defendant's knowledge of the victim's identity is an essential element of aggravated battery upon a peace officer which the State is required to prove beyond a reasonable doubt).

SB 38 provides that a person “who assists or is assisted by one or more other persons to commit a battery upon a [CYFD employee] who is in the lawful discharge of [their] duties is guilty of a fourth degree felony.” This is the same language used in Sec. 30-9-1 and Sec. 30-9-1.2, NMSA 1978 regarding school personnel and health care personnel. Since Sec. 30-1-13, NMSA 1978 already permits someone to be charged as an accessory “...if he procures, counsels, aids or abets in its commission,” it is unclear why the language quoted above was included. It also is likely that if the principal involved in a battery on a CYFD worker is charged with both the battery and being assisted by one or more persons to commit the battery, they will likely claim a violation of the double jeopardy clause in 5th amendment of the United States Constitution and Section 15, Article II of the New Mexico Constitution.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS