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FISCAL IMPACT REPORT

ORIGINAL DATE 02/02/09
 LAST UPDATED 03/18/09 HB _____

SPONSOR Ortiz y Pino

SHORT TITLE Juvenile Public Safety Advisory Board SB 248/aSPAC/aSFI#1/aHJC

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate	Indeterminate	Indeterminate	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Juvenile Parole Board (JPB)
 Public Education Department (PED)
 New Mexico Sentencing Commission (NMSC)
 Attorney General's Office (AGO)
 Administrative Office of the Courts (AOC)

No Response Received From

Lieutenant Governor's Office

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment for Senate Bill 248 contains the following:

- Deletes the Senate Public Affairs Committee amendment 3 that amended Section 32A-2-12 on page 30, line 6, by adding "or supervised release" between preliminary parole and revocation hearing.
- Amends Section 32A-2-12 by deleting the following language: "who is under the jurisdiction of the children's court and subsequently commits an adult crime" and inserting the following language: "A child shall not be transferred to a county jail solely on the basis of attaining the age of eighteen while detained in a juvenile detention facility."

- Deletes the adding of a new Subsection F to Section 32A-2-12. Subsection F dealt with a child who has previously been incarcerated as an adult or a person 18 to 21 years of age who is subject solely to the jurisdiction of the children’s court may be detained in a detention facility licensed by CYFD, another suitable place designated by the court or a county jail prior to the individual’s initial appearance before the court or preliminary parole revocation hearing.
- Deletes the adding of the following language to Section 32A-3B-12: “and a prima facie case presented” and “or a prima facie case is not presented”.
- Amends Section 32A-4-6 by deleting “a reasonable suspicion” and adding “reasonable grounds” in regards to a child may be held or taken into custody by a law enforcement officer when the office has evidence giving rise to “reasonable grounds” to believe that the child is abused or neglected.
- Amends Section 32A-4-14 inserting language to clarify that when a child’s placement is changed written notice “of the factual grounds supporting the change in placement’ shall be sent to the child’s guardian ad litem or attorney.
- Deletes the adding of the following language to Section 32A-4-19: “and a prima facie case presented” and or a prima facie case has not been presented.”.
- Amends Section 32A-4-25.1 by adding “D. If the court adopts a permanency plan other than reunification, the court shall determine whether the department has made reasonable efforts to identify and locate all grandparents and other relatives. The court shall also determine whether the department has made reasonable efforts to conduct home studies on any appropriate relative expressing an interest in providing permanency for the child. The court must ensure the consideration has been given to the child’s familial identity and connections. If the court finds that reasonable efforts have not been made to identify or locate grandparents and other relatives or to conduct home studies on appropriate and willing relatives, the court shall schedule a permanency review within sixty days to determine whether an appropriate relative placement has been made. If a relative placement is made, the subsequent hearing may be vacated.”. Subsections are re-lettered accordingly.
- Amends Section 32A-4-25.2 by adding “including biological family members” to the list of participants in developing a transition plan prior to a child reaching 17 years of age.
- Amends Section 32A-4-29 by deleting on page 121, line 11 and 12, “The motion may be filed regardless of a court-ordered permanency plan.” and adding on page 123, line 17, “The moving party shall also file a motion for court-ordered mediation between the parent and any prospective adoptive parent to discuss an open adoption agreement. If an open adoption agreement is reached at any time before termination of parental rights, it shall be made a part of the court record.”.

Synopsis of SFI#1 Amendment

The Senate Floor amendment #1 for Senate Bill 248 contains the following:

- Amends Section 9-2A-5 and provides that the juvenile public service advisory board is administratively attached to the Children, Youth and Families Department.
- Amends Section 32A-2-13 to provide that a child’s attorney must be present with the child during any detention hearing held by electronic means and that no plea may be taken via electronic means.
- Amends Section 32-2-23.2 to provide that a child’s attorney is entitled to notice and may be present during a release meeting.

- Amends Section 32A-2-26 to return to the language in the current Code requiring a motion and court order before law enforcement records may be sealed.
- Amends Section 32A-2-26 (F) and provides that a child, instead of a “person”, who has been the subject of a delinquency petition is entitled to notice by the department that the child’s records have been sealed. The amendment also provides that the department must provide notice to the court, the child’s attorney and the referring law enforcement agency that the child’s records are subject to sealing.
- Amends Section 32-2-26 (G) and (H) to provide that the department shall seal the child’s records when the child reaches age 18 or at disposition, whichever occurs later; and provide notice to the children’s court attorney, the child’s attorney and the referring law enforcement agency. Children who are determined not to be delinquent offenders shall, upon motion to the court, have their records automatically sealed.
- Technical amendments to Section 32A-4-6 and Section 32A-4-22 to fix areas where the original version had indicated by not underscoring and incorrectly underscoring, respectively, language in the bill.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment are as follows:

- Amending 32A-2-5 Juvenile Probation and Parole Services to change the term ‘parole’ to ‘supervised release’ and the term ‘juvenile parole board’ to ‘department’ to ensure consistency with other changes to the Children’s Code that modify the roles of the Juvenile Parole Board and CYFD in releasing juveniles from State custody.
- In 32A-2-12 Placement or Detention, adding the term ‘supervised release’ to ensure consistency with other changes to the Code that modify the roles of the Juvenile Parole Board and the Department in releasing juveniles from CYFD custody.
- Removing the new section in 32A-2-16 that allowed for juveniles in Children’s Court to be unshackled.
- Removing the new section in 32A-2-24 that allowed for the right to a jury trial in a probation revocation proceeding.
- Amending 32A-2-29 Motor Vehicle Code Violations to ensure that any dispositions under the Motor Vehicle Act are not inconsistent with those under the Children’s Code.
- Amending 32A-2-32 Confidentiality to clarify that any agency, person, or institution (including Protection & Advocacy) has access to records as long as they agree not to re-release without proper consent or as otherwise provided by law, and don’t have to sign another confidentiality agreement in order to access records that they have a statutory right to access.
- Amending 32A-3B-12 Adjudicatory Hearing – Time Limitations to conform to federal standards on timeliness of adjudications.
- Amending 32A-4-25.2 Transition Services to clarify that youth fourteen years of age and older are represented by attorneys, not Guardians ad litem.
- Amending 32A-7A-4 Juvenile Public Safety Advisory Board - Qualifications to remove language that would have prevented 2 members of the board being from the same county.
- Amending 32A-7A-6 Juvenile Public Safety Advisory Board – Powers and Duties to give the board the power to adopt rules and regulations.
- Removing the new section in 32A-21-4.1 that provided an unemancipated minor, fourteen years of age or older, the right to make medically necessary health care decisions under specific circumstances.

Synopsis of Original Bill

Senate Bill 248 would amend several provisions in the Children’s Code, the Delinquency Act, the Family in Need of Court-Ordered Services Act, the Abuse and Neglect Act, the Adoption Act, the Juvenile Parole Board Act, the Emancipation of Minors Act, the Juvenile Community Corrections Act, the Motor Vehicle Code and other state laws relating to involvement of children in the juvenile justice system as follows:

Section 1 (amends 9-2A-16 functions of juvenile justice advisory committee) requires that adult jails or lockups, which are used as temporary holding facilities for juvenile offenders, file annual reports regarding compliance with federal requirements.

Section 2 (amends 30-22-11.1 escape from juvenile detention) includes children who are alleged delinquent, and who have escaped from a juvenile detention facility, in the definition of “escape from the children youth, and families department.” Escape from a detention facility is a misdemeanor.

Section 3 (amends 30-22-11.2 aggravated escape from the custody of children, youth, and families department) includes children who are alleged delinquent, escape from a juvenile detention facility, and commit aggravated assault and battery within the definition of “aggravated escape from the custody of the children youth, and families department.” Aggravated escape is a fourth degree felony.

Section 4 (amends 31-26-12 procedures for release from custody) eliminates references to the juvenile parole board and requires the children, youth, and families department to notify the district attorney regarding release or parole of a juvenile offender.

Children’s Code General Provisions

Section 5 (amends 32A-1-3 purpose of the act) amends the legislative purpose of the Children’s Code to include reducing the overrepresentation of minority children and families in the juvenile justice, family services and abuse and neglect systems through early intervention, links to community resources, and elimination of discrimination.

Section 6 (amends 32A-1-4 definitions) defines disproportionate minority contact as “the involvement of a racial or ethnic group with the criminal or juvenile justice system at proportion either higher or lower than that group’s proportion in the general population.”

Section 7 (amends 32A-1-8 jurisdiction) provides that the children’s court may acquire jurisdiction over motor vehicle or municipal traffic code violations pursuant to Section 32A-2-29.

Section 8 (amends 32A-1-21 runaway child) provides that children who have run away may not be placed in a “secure setting” while their parents are located.

Delinquency Act

Section 9 (amends 32A-2-3 definitions) defines the children’s court’s jurisdiction over motor vehicle code violations.

Defines “supervised release” and provides that juveniles placed on supervised release are subject to monitoring by the department and may be returned to custody for violating any conditions of release.

Section 10 (amends 32A-2-4 detention facilities) requires juvenile detention facilities to comply with the department’s daily reporting requirements.

Section 11 (new material 32A-2-4.1) children arrested and held in an adult lock-up or jail may not be detained more than six hours and must be segregated from adult offenders. Adult jails or lockups, used as temporary holding facilities for juveniles, must file annual reports with the department regarding their compliance with federal requirements. (See Section 1).

Section 12 (amends 32A-2-10 release or delivery from custody) allows children alleged delinquent to be delivered to a center or organization, recognized by the court or the department, as an alternative to secure detention. This section also allows a child to be released to any adult authorized to sign on behalf of the child’s parent, guardian, or custodian.

Section 13 (amends 32A-2-12 placement or detention) requires that shelter care facilities used for the placement of children alleged delinquent comply with all regulatory requirements; defines such placements as temporary, and requires a judicial review of the placement within 30 days.

Identifies detention options, including juvenile detention facilities, for children who have been previously incarcerated as adults, who are age 18-21, and are subject solely to the jurisdiction of the children’s court. Children who have been incarcerated as an adult, or are age 18 or older, and who are within the children’s court jurisdiction and commit another crime may not be detained in a juvenile facility.

This section also allows any child, placed in an out of home placement pursuant to this statutory provision, to request a judicial review of the appropriateness of the placement.

Section 14 (amends 32A-2-13 detention hearings) provides that the court may allow detention hearings to be held electronically if the court finds undue hardship and that the hardship substantially outweighs any prejudice or harm to the child. All hearings conducted electronically must be recorded and preserved as part of the record.

Section 15 (amends 32A-2-14 basic rights) provides that a child subject to the provisions of the delinquency act is entitled to the same basic rights as an adult including any rights provided under the delinquency act, except as otherwise provided in the Children’s Code. This section also provides that children are entitled to counsel in post-dispositional court proceedings.

Section 16 (32A-2-16 conduct of hearings) prohibits the use of physical restraints on a child while in the courtroom unless the court finds, on the record, that restraints are “reasonably necessary to maintain order, prevent the child’s escape or provide for the safety of others in the courtroom.”

Section 17 (amends 32A-2-17 predisposition studies) permits psychiatrists and licensed professional clinical counselors to examine children prior to a hearing on a delinquency petition or as part of a predisposition study. Includes psychiatrists and licensed professional clinical counselors in the group of professionals who may examine parents or guardians whose ability to care for or supervise a child is at issue.

Provides that the court may order that a child adjudicated delinquent may be administered a pre-dispositional evaluation. The evaluation must be completed within fifteen days of the court's order and there is a preference for performing the evaluation in the child's community.

If a child is detained for the purposes of performing a pre-dispositional evaluation the evaluation must be performed within 15 days. A child shall not be detained for more than 15 days within a 365 period for the purpose of a completing a pre-dispositional evaluation, unless good cause is shown.

Section 18 (amends 32A-2-19 disposition of an adjudicated delinquent offender) defines dispositional and amenability to treatment factors to include consideration of a child's brain development, maturity, trauma history, and disability. Deletes references to parole and substitutes "supervised release" in defining commitment.

Section 19 (amends 32A-2-20 disposition of a youthful offender) includes consideration of a child's brain development, maturity, trauma history, and disability among the factors the court shall consider in determining whether or not a child should be sentenced as an adult.

Section 20 (amends 32A-2-23 limitations on dispositional judgments) eliminates references to the juvenile parole board and substitutes "supervised release" for "parole." This section also allows the department to seek a bench warrant if a child "absconds" from supervised release.

Section 21 (new material 32A-2-23.1 release eligibility) grants the department exclusive jurisdiction and authority to release a child during the term of the child's commitment and identifies factors to be considered in releasing the child. A child is eligible for release at any time after entry of judgment transferring custody to the department, the department may impose any conditions of release it deems appropriate, and the department will consider a reasonable request for release as early as 60 days after the child has been committed.

If the department and the "juvenile public safety advisory board" do not agree on a child's release, the board may petition the court for review within 10 days of the department's decision. If the board fails to petition the court the department's decision stands. Upon the board's petition, the court may review the matter without a formal hearing and may either grant or deny the child's release.

Section 22 (new material 32A-2-23.2 release proceedings) requires that the department provide the juvenile public safety advisory board with a list of children it intends to release 35 days in advance of the next regularly scheduled release consideration meeting. Release consideration meetings are to be held quarterly, are closed to the public, and must include the child, a quorum of the board, and a representative of the department.

Section 23 (amends 32A-2-24 probation, revocation, disposition). Provides for jury trials in probation revocation proceedings if the alleged offense would be triable by a jury if committed by an adult.

Section 24 (amends 32A-2-26 – Sealing of Records). Includes law enforcement among the agencies whose records may be sealed. Adds a requirement that the child be 18 years of age or older, or the court must find that good cause exists to seal the records prior to the child's eighteenth birthday, before records may be sealed.

Children who are the subject of a delinquency petition are entitled to notice of their right to have records sealed, including a copy of the statute, at the time of the preliminary inquiry and at the time of release from custody or supervision.

The department is responsible for sealing all records for children who have not been subject to a delinquency petition when the child reaches 18 or sooner if good cause is shown.

Sealed records may be used for research and reporting purposes subject to the confidentiality provisions in 32A-2-32 and other applicable federal and state laws."

Section 25 (amends 32A-2-29 motor vehicle code violations) confers exclusive jurisdiction on the children's court for any motor vehicle violations arising out of an occurrence for which the children's court had otherwise acquired jurisdiction.

Section 26 (amends 32A-2-32 confidentiality records) requires that children's mental health records only be disclosed pursuant to the Children's Mental Health and Developmental Disabilities Act. Limits disclosure of records, other than mental health records, to those designated in the statute and those who have entered into written confidentiality agreements. Requires that victim or witness information be redacted from any records that are disclosed or released.

Families in Need of Court Ordered Services (FINCOS) Act

Section 27 (amends 32A-3B-8 basic rights) provides for the appointment of a youth attorney for children age 14 or older.

Section 28 (amends 32A-3B-12 adjudicatory hearing) adds a requirement that a prima facie case be presented within 90 days of service on the respondent. If a prima facie case is not presented within the statutory time frame the petition shall be dismissed with prejudice.

Section 29 (amends 32A-3B-16 dispositional judgment) includes a requirement that if the child is an undocumented immigrant, the court must make a finding as to whether the family services plan includes referrals to non-governmental agencies that may be able to provide assistance regarding the child's, and if appropriate the families,' immigration status.

Section 30 (amends 32A-3B-18 dispositional judgments – time limitations) includes the child as a party permitted to bring a motion to revoke, modify, or extend legal custody or protective supervision.

Abuse and Neglect Act

Section 31 (amends 32A-4-2 definitions) defines "transition plan" as an individualized plan outlining appropriate services to increase the child's independent living skills.

Section 32 (amends 32A-4-5 admissibility of report in evidence) requires law enforcement to utilize child sensitive procedures when interviewing child victims and witnesses. The child victim or witness shall be interviewed, when possible, in a place where the perpetrator is not present.

Section 33 (amends 32A-4-6 taking into custody) requires that, prior to taking a child into custody, law enforcement must contact CYFD who will conduct an on-site safety assessment.

The section also specifies those circumstances under which an officer may take a child into custody without an on-site safety assessment.

This section also provides that the department is not obligated to place a child in an out-of-home placement and may release a child to their parent, guardian, or custodian.

Section 34 (amends 32A-4-7 release or delivery from custody) removes references to “shelter care facility” and provides that the department may release a child within two days if appropriate or ordered by the court.

Section 35 (amends 32A-4-14 change in placement) includes references to a child’s attorney as well as a guardian ad litem consistent with New Mexico’s youth attorney model. Requires that a child’s guardian ad litem or youth attorney file a motion to object to a change in placement.

Section 36 (amends 32A-4-18 custody hearings probable cause) provides that if the court does not find probable cause the court shall: (1) retain jurisdiction and may order the respondent to stay in the jurisdiction; (2) return legal custody of the child to child’s parent or guardian with conditions to provide for the child’s safety and well-being; and (3) order that the child’s parents or guardians allow the child contact with their guardian ad litem or attorney.

The amendment also allows the court to order diagnostic examinations or evaluations and clarifies that nothing in this section abridges the Indian Child Welfare Act.

Section 37 (amends 32A-4-19 adjudicatory hearings) adds a requirement that a prima facie case be presented within 90 days of service on the respondent. If a prima facie case is not presented within the statutory time frame the petition shall be dismissed with prejudice.

Section 38 (amends 32A-4-20 conduct of hearings) allows children present at abuse and neglect hearings to object to the presence of the media. The court may preclude the media if it finds that the presence of the media is contrary to the best interest of the child.

Section 39 (amends 32A-4-21 predisposition studies) requires that the predisposition study include: (1) a treatment plan that addresses the child’s education needs; and (2) information regarding the proximity of the child’s foster home to the child’s school at the time of placement. The amendment also requires that the department provide copies of the study to counsel 5 days prior to the dispositional hearing.

Section 40 (amends 32A-4-22 disposition) requires that the court determine whether the department made reasonable efforts to place siblings together or provide siblings with visitation and contact.

Section 41 (new material 32A-4-23.1) outlines the procedures to be followed in assisting undocumented immigrant children who are in the department’s custody.

Section 42 (amends 32A-4-24 limitations on dispositional judgments) provides that the court may retain jurisdiction until a child turns 21 in cases involving special immigrant juvenile status and when the child consents for purposes of transition planning.

Section 43 (amends 32A-4-25 periodic review) clarifies that the child is a party.

Section 44 (amends 32A-4-25.1 permanency hearing) clarifies that the child is a party.

Section 45 (new material 32A-4-25.2) sets out the requirements for planning for transition services.

Section 46 (new material 32A-4-25.3) requires the court to review the child's transition plan at the last review or permanency hearing prior to the child's 18th birthday. Allows the court to retain jurisdiction, if the child consents, for not more than one year beyond the child's 18th birthday.

Section 47 (amends 32A-4-29 termination procedure) provides that any party may file a motion to terminate parental rights at any time regardless of a court ordered permanency plan. The department is not required to file a motion to terminate if the child's parents are incarcerated, are in a court ordered residential substance abuse treatment plan, and termination is not in the child's best interests. If the court denies a motion to terminate parental rights, the court shall: (1) issue any appropriate orders immediately and (2) direct the parties to file a stipulated order, interim plan, or request a hearing within 30 days.

Section 48 (amending 32A-4-32 permanent guardianship) provides for the appointment of an attorney for children 14 or older in revocation of permanent guardianship proceedings.

Section 49 (amending 32A-4-33 confidentiality) permits the department to release confidential information to social services agencies in other countries. Deletes the section allowing the department to release information regarding child fatalities.

Section 50 (new material 32A-4-33.1 records release when a child dies) provides for the release of information in the event of a child fatality.

Adoption Act

Section 51 (amends 32A-5-8 confidentiality) clarifies that a child's attorney is entitled to notice.

Section 52 (amends 32A-5-16 termination) clarifies that a child's attorney is entitled to notice. Provides that a child's attorney in an abuse and neglect proceeding shall represent the child in a contested proceeding for termination of parental rights.

Section 53 (amends 32A-5-24 relinquishment) clarifies that a child's attorney is entitled to notice. Provides that a child's attorney in an abuse and neglect proceeding shall represent the child in a contested proceeding for termination of parental rights.

Section 54 (amends 32A-5-33 appointment of a guardian ad litem or attorney) clarifies that a child's attorney is entitled to notice. Provides that a child's attorney in an abuse and neglect proceeding shall represent the child in a contested proceeding.

Section 55 (amends 32A-5-35 open adoptions) allows for sibling contact in an open adoption.

New Act: Juvenile Safety Public Advisory Act

Section 56 (new material 32A-7A-1) Juvenile Safety Public Advisory Act.

Section 57 (new material 32A-7A-2) establishes a seven-member board appointed by the governor for six-year terms.

Section 58 (new material 32A-7A-3) provides that board members may be removed by the governor.

Section 59 (new material 32A-7A-4) delineates board member's qualifications.

Section 60 (new material 32A-7A-5) the governor shall designate the chair and the chair will designate 2 regional vice-chairs.

Section 61 (new material 32A-7A-6) establishes the board's responsibilities.

Section 62 (new material 32A-7A-7) board members may receive mileage and per diem but may not receive any other compensation or allowance.

Section 63 (new material 32A-7A-8) allows the board access to records and to children adjudicated delinquent who are being considered for release.

Training for Cultural Recognition

Section 64 (amends 32A-18-1) includes a child's attorney among those who shall receive cultural recognition training.

Emancipation of Minors

Section 65 (new material 32A-21-4.1 medical decision making) allows unemancipated minors, age 14 years or older, to consent to medically necessary health care services under certain conditions; addresses the treatment provider's efforts to contact the child's parents' or guardian; and addresses a parent's liability for payment.

Juvenile Community Corrections

Section 66 (amends 33-9A-4 applications criteria) substitutes department for juvenile parole board, and substitutes supervised release for parole.

Section 67 (amends 33-9A-5 selection panels) substitutes department for juvenile parole board. Substitutes "administrative office of the district attorneys" for "district attorney" in establishing local panels.

Application of Minors for Motor Vehicle Licenses

Section 68 (amends 66-5-11 application of minors) allows minors in the custody of the state to apply for a driver's license.

Other Provisions

Section 69 repeals sections 9-2A-5 (Executive Department/Children, Youth, and Families Department/Administratively Attached Agency) and 32A-7-1 through 32A-7-9 (Juvenile Parole Board).

Section 70 makes the provisions of the act apply to all children who are on release or otherwise eligible for release as of July 1, 2009.

Section 71 makes the act effective July 1, 2009.

FISCAL IMPLICATIONS

CYFD reported the proposed legislation contains amendments to the NM Children's Code that are required to provide compliance with the recently federally enacted Fostering Connections to Success and Ensuring Timely Adoptions Act (P.L. 110-351). Compliance with Act is required for access to federal Title IV-B, IV-E, Chafee and Educational and Training Voucher funding, and failure to enact these provisions will jeopardize funding. Currently this funding constitutes approximately 40% of the Protective Services Program budget.

CYFD reported additional requirements set forth in the Abuse and Neglect chapter will have fiscal implications for the Protective Services Program. Specifically, (1) on-site safety assessment prior to placement into foster care will require increased 24-7 access to protective services staff and result in additional on-call and overtime costs; (2) the staffing to create the transition plan and court review create additional workload requirements for staff serving youth; (3) staff serving youth may request additional funds to address the needs identified in the transition plan; (4) educational continuity for children in foster care may result in additional travel cost to reimburse foster parents and staff for transporting children to their school of origin; and (5) extending foster care beyond age eighteen establishes an additional demand for the Protective Services Program's care and support budget as foster care maintenance payments would continue. Additionally, the department reported the potential for accessing Title IV-E funds for partial reimbursement in subsequent years. However, CYFD is unable to determine the extent of this reimbursement at this time.

JPB states there would be a fiscal impact to the board with the appointment of four new board members. The proposed legislation calls for quarterly release meetings with the secretary of CYFD, the board to visit each juvenile facility once a year, and the board to submit a written report by June 30th each year to the governor and secretary of CYFD regarding care and treatment of youth in juvenile facilities. JPB estimates for monthly board meetings it will cost \$7,980 annually, for the board to visit all juvenile facilities it will cost \$18,432 annually, and for quarterly board meetings it will cost \$2,666 annually.

AOC reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commended prosecutions. The provisions that require new elements of proof, new hearings or extend the court's jurisdiction has the potential to increase the number and length of hearings, requiring additional resources to handle the increase.

CYFD reported the fiscal implications that existed in the original bill no longer exist. By removing language through amendment that provided rights to a jury trial for probation revocations and the language allowing for juveniles to be unshackled the courtroom, there are no longer any costs that would be associated with the implementation of the amended bill.

SIGNIFICANT ISSUES

CYFD noted that Senate Floor amendment #1 for Senate Bill 248 to Section 9-2A-5 was necessary to ensure that the new juvenile public safety advisory board continues to be administratively attached to CYFD. Concerns about the child being adequately represented if their attorney was not present with them during an electronic detention hearing and whether the child could give a plea electronically and still be protected were addressed by amending Section 32A-2-13. Representation issues were also raised about the child having an attorney present at a release consideration meeting; the amendment to Section 32A-2-23.2 addresses those. Issues had been raised about the original sealing change putting too much of a burden on the child for sealing their records, this part of the amendments addresses those concerns.

CYFD reported the most significant issues are related to the proposed amendments in the Abuse and Neglect, Delinquency and Juvenile Parole Board Articles of the Children's Code. They represent modifications to reach best practices standards and/or ensure compliance with federal laws and regulations.

Amendments to Section 32A-4-6 NMSA 1978 address law enforcement taking children into custody. The changes to this section require that unless certain emergent circumstances or exceptions apply, the law enforcement officer must first contact CYFD to conduct an on-site safety assessment to determine whether it is necessary that a child be placed in department custody. CYFD noted this change is an important effort to reduce the trauma to a child of being removed from a family only to be returned home in less than within a week. This occurs in approximately 45% of police removals.

CYFD stated a corollary to the safety issue is a proposal to amend Section 32A-4-18 NMSA 1978 on Custody Hearings, which will ensure that when a court finds no probable cause to keep a child in custody at the initial custody hearing that the court will not lose jurisdiction over the case. This will prevent children being removed from the jurisdiction and will ensure that CYFD has the opportunity to address familial issues of abuse or neglect by pursuing an adjudication on the merits of the case.

CYFD stated a proposal to amend Section 32A-4-20 NMSA 1978 to enable a child to object to the presence of the media in the courtroom proceedings further empowers children in New Mexico. It enables the child to object and authorizes the court to exclude the media from the courtroom if it finds that the presence of the media is contrary to the best interests of the child.

CYFD stated efforts to comply with Fostering Connections to Success and Ensuring Timely Adoptions Act are evident with new language proposed to require educational continuity for children coming into foster care and for the courts to determine whether reasonable efforts were made by the CYFD to place siblings together unless such joint placement would be contrary to the safety or well-being of any of the siblings. If siblings were not placed together, the court must consider whether reasonable efforts have been made to provide the siblings with visitation or contact unless such would be contrary to the safety or well-being of any of the siblings.

The proposed legislation also contains a set of procedures for CYFD to assist undocumented children in state custody who cannot be reunited with their parent, guardian or custodian and who have permanency plans that in the federal language require "long term foster care." The proposal creating Section 32-4-23.1 NMSA 1978 on Special Immigrant Juvenile Status is taken from federal law and is designed to make explicit in state law the rights of certain undocumented children in department custody who cannot return to the biological families.

CYFD reported a proposed change to Section 32A-4-33 NMSA 1978 on Release of Confidential Information would enable the CYFD to release confidential information to a governmental social services agency in another country when it is in the child's best interests. This would allow CYFD to share information with the Mexican government through either the Mexican Consulate offices or the child protective services agency in Mexico as well as other nations.

CYFD noted a proposal to enable CYFD to release limited information to the public upon request is contained in Section 32A-4-33.1 NMSA 1978. This new section would apply to child fatalities and enable limited disclosure of confidential information without the existing requirement that the local District Attorney's Office permit such disclosure. The new proposal does authorize CYFD to consult with the District Attorney and to withhold information CYFD and the District Attorney believe will undermine a successful criminal prosecution.

JPB stated that the board has provided what some would say oversight to the juvenile justice facilities and acted as the releasing authority in the State of New Mexico. As such the board has made sometimes made unpopular decisions on whether or not to release a youth, especially if there is a victim's voice needed. JPB noted the Juvenile Public Safety Advisory Board would still make recommendations to CYFD on treatment issues and what is in the youth's and public's interests.

NMSC reported the proposed legislation is the work product of a 300 member Children's Code Task Force that worked throughout the 2008 interim. Taskforce members included CYFD staff, child advocates, social workers, behavioral health workers, law enforcement officers, prosecutors, defense attorneys, judges, county officials and others. Some of the statutory changes are necessary for CYFD to move forward with implementation of Cambiar New Mexico. This proposed "regionalization" of juvenile justice facilities and services is modeled on the approach taken in the state of Missouri. Specifically, the proposed statutory change that repeals the Juvenile Parole Board and replaces it with an advisory board that works with CYFD on release decisions emulates the approach used in Missouri.

AGO noted the proposed legislation would enact changes to many state laws governing the interaction of minors with state agencies and the juvenile justice system involving topics of mental health, physical health, due process, parental notification delinquent children, forum jurisdiction and motor vehicle matters. It appears to provide greater rights to those minors than those currently existing in state law. It also imposes more detailed requirements on the courts and CYFD relating to their interaction with those minors.

PED reported that the Senate Public Affairs Committee amendment on page 70, strikes out lines 6 through 10 in their entirety. This alleviates the likelihood of having had impacted PED and schools to enter into a written confidentiality agreement with the Children Youth and Families Department or other disclosing entity.

CYFD reported the Senate Public Affairs Committee amendment of the proposed legislation:

- provides clarifying language regarding the right to access confidential records without a 'pre-release' agreement from CYFD;
- clarifies that Motor Vehicle Code violations are subject to the Delinquency Act whereas the original bill could have subjected juveniles to mandatory adult sanctions for such Motor Vehicle Code violations as DWIs; and
- allows for more than one member of the proposed Juvenile Public Safety Advisory Board to come from the same county, and allows for the proposed board to adopt rules and regulations to perform their duties.

PERFORMANCE IMPLICATIONS

CYFD reported the requirement for an on-site safety assessment prior to law enforcement placing a child into custody can potentially impact the percent of children who are the subject of a substantiated maltreatment within six months of a prior determination of substantiation; the percent of children reunified with their natural families within 12 months; percent of children who are the subject of substantiated maltreatment while in foster care; and the percent of children in foster care for 12 months with no more than two placements. The proposed amendments to the delinquency chapter may impact the following CYFD performance measures: reduce the percent of clients re-adjudicated within two years of a previous adjudication; increase the percent of clients who complete formal probation; reduce the percent of client recommitted to a CYFD facility within two years of discharge; and reduce the percent of juvenile justice division clients age 18 and older who enter adult corrections within two years after discharge from a juvenile justice facility. The proposed amendments related to oversight, utilization of, and review of adult facilities, shelters as well as expanding release options all speak to the safety of both our youth and their communities. Not only is there a potential for impact those performance measures that address recidivism, but the proposed amendments may also influence the performance measure on percent of incidents in juvenile justice facilities requiring the use of force resulting in injury.

JPB stated it currently it is unable to meet all of its performance measures which are closely tied to CYFD. JPB suggested the performance measures should be transferred to CYFD as to provide accountability.

AOC noted the proposed legislation may have an impact on the following performance measures: cases disposed of as a percent of cases files and percent change in case filings by case type.

PED reported the proposed legislation may positively impact measures related to the governor's truancy and dropout prevention initiative. The proposed legislation may enhance school attendance, graduation rates and student performance, and may have an impact on abuse, neglect, juvenile delinquency substance abuse and other related matters.

ADMINISTRATIVE IMPLICATIONS

CYFD reported administrative implications regarding additional demands on existing staff. Full compliance with the provisions of the proposed legislation requires significant amendments to CYFD policy and regulation and the potential to make changes to the agency's electronic

management information system. Current staff will need to be trained on all the changes and CYFD quality assurance efforts will need to be modified to assess compliance with the practice modifications.

JPB reported it will continue to provide 40-day reviews, three month reviews and reports to CYFD so that each youth is tracked for release eligibility. The board still needs a budget for 5 classified FTE and 1 exempt FTE. Due to the board remaining a volunteer board, staff is needed to continue providing services to the board. JPB also noted that rules and regulations would need to be adopted clearly defining the change and duties of CYFD and the Juvenile Public Safety Advisory Board.

AOC stated the provisions regarding a child's eligibility for release are unclear and conflicting. The proposed legislation grants CYFD the exclusive jurisdiction and authority to release a child during the term of the child's commitment and provides that a child is eligible for release at any time after entry of judgment transferring custody to CYFD. AOC noted the proposed legislation appears to allow CYFD to significantly reduce or extend the time a delinquent child has been committed, regardless of the court's order.

PED noted that the proposed legislation may have an administrative impact in regards to written confidentiality agreements, treatment plan addressing the child's educational needs, and school transportation.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Senate Bill 248 has a relationship with Senate Bill 22, and conflicts with House Bill 255 and Senate Bill 7.

OTHER SUBSTANTIVE ISSUES

CYFD stated the section on transition services provides for the department to meet with the child, the child's guardian ad litem or attorney and others to develop a transition plan. As the Children's Code provides that youth under the age of fourteen are assigned guardian ad litem it would appear to suggest that CYFD would be developing transition plans for young children. This is contrary to child welfare practice and the requirements of the Adoptions and Safe Families Act (ASFA) that states long term foster care with emancipation from foster care is not an acceptable or allowable permanency option for young children.

CYFD noted Section 32A-3B-12 currently requires that an adjudicatory hearing for an alleged family in need of court ordered services is conducted within ninety days as opposed to sixty days required by the federal Adoption and Safe Families Act timelines.

JPB stated that Section 32A-2-12 (F)(4) of the proposed legislation, which refers to preliminary parole revocation and preliminary parole, needs to make sure that if a youth is returned to the facility for violating release conditions that they are afforded due process.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

CYFD reported failure to enact the proposed legislation will affect the department's ability to comply with Fostering Connections to Success and Ensuring Timely Adoptions Act and jeopardize the agency's access to child welfare federal funding. It will maintain existing barriers to successful transition into adulthood for youth and negatively impact CYFD's ability to comply with the requirements of our federal program improvement plan (PIP).

Not enacting the Delinquency Act provisions of this bill will result in continued confusion when attempting to determine jurisdiction over Motor Vehicle Act violations, losing an opportunity to potentially shorten the amount of time that a juvenile spends in detention while awaiting for a responsible adult to appear for law enforcement to release them to, continued hardship on law enforcement when transporting juveniles to detention hearings, continued inconsistency in the use of physical restraints in courtrooms in different jurisdictions throughout the state, the overuse of Youth Diagnostic and Development Center as the sole placement for juveniles ordered to receive 15-day evaluations, the inability for the department to effectively return parole absconders in the interest of public safety, continued confusion and inefficiency in the areas of records sealing and confidentiality, and the inability of law enforcement to effectively prosecute juveniles for escaping from detention facilities.

CYFD reported if the Juvenile Parole Board statute is not changed as proposed, CYFD will be significantly impaired in its ability to continue with juvenile justice reform effort Cambiar New Mexico. Cambiar New Mexico is based upon the Missouri Model which is a nationally recognized best practice that depends upon intensive staff work with the youth. It provides for rehabilitation of and accountability on the part of the youth without sacrificing safety. Part of that work is the determination of readiness for release. If an outside entity remains responsible for making that decision, the staff-youth relationship, which is the basis of success of Cambiar New Mexico (Missouri Model), is fundamentally compromised. Mark Steward, the founder of the Missouri Model, who has spearheaded the implementation of the program in New Mexico, has stated that the model cannot be successful with an independent parole board as the ultimate decider.

RPG/mc:svb