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FISCAL IMPACT REPORT

ORIGINAL DATE 1/24/07

SPONSOR J. R. Trujillo LAST UPDATED _____ HB 123

SHORT TITLE Consumption of Alcohol as Delinquent Act SB _____

ANALYST McOlash

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Bernalillo County District Attorney
 Attorney General's Office (AGO)
 Public Defenders' Office (PD)
 Children, Youth, & Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 123 amends Section 32A-2-3 (A)(2) of the Children's Code to make "consuming" of alcoholic a delinquent act along with buying, receiving, possessing, or being served any alcoholic liquor.

FISCAL IMPLICATIONS

None identified.

SIGNIFICANT ISSUES

This amendment will allow law enforcement officers to charge those eighteen and younger who appear to be under the influence of alcoholic liquor with a delinquent act, take them into custody, and/or refer them to the Juvenile Probation Office for services and, potentially, prosecution. Without this amendment, law enforcement may only charge those eighteen and younger with unlawful possession of alcoholic liquor, and only if the officer actually witnesses the youth in physical possession of some type of alcoholic beverage.

This bill is in response to a decision of the New Mexico Court of Appeals. It will allow charging a minor with a delinquent act when the minor has consumed alcohol, but no longer has possession of alcohol.

OTHER SUBSTANTIVE ISSUES

The proposed amendment creates problems of consistency with other legislation, as well as problems of proof. The proposed amendment criminalizes alcohol consumption by persons under eighteen, along with other aspects of alcohol involvement criminalized by the Liquor Control Act. The proposed amendment does not address consumption by persons eighteen to twenty-one years old. The Liquor Control Act currently does not criminalize alcohol consumption by that class of youth.

Since “One does not ‘possess’ alcohol in one’s body” *State v. Tywayne H.* 1997-NMCA-015, 123 N.M. 42, 933 P.2d 251, the amendment would allow for a child who seems intoxicated but does not have any alcohol to be investigated and possibly charged. The proposed amendment may require the functional equivalent of a complete DWI investigation, including field sobriety tests and a blood or breath test, without the aspect of driving.

BM/mt