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FISCAL IMPACT REPORT

ORIGINAL DATE 3/2/15

SPONSOR Clahchischilliage LAST UPDATED _____ HB 536

SHORT TITLE Court Consideration of Youthful Offenders SB _____

ANALYST A. Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB 499.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Children, Youth and Families Department (CYFD)
 Public Defender Department (PDD)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 536 proposes to amend Section 32A-2-20 NMSA 1978 by removing “alleged” as adjective from offense in elements court must consider before finding child non-amenable to rehabilitation. The bill clarifies that an amenability hearing is to occur after an adjudication of guilty on an offense. The effective date of the bill is July 1, 2015.

SIGNIFICANT ISSUES

According to CYFD, this bill cleans up the language in sections (C) and (E) with changes clarifying that by the time of disposition, the offense is no longer alleged, as the child has either pled to it or been found guilty by trial.

AOC reports that the current language of Section 32A-2-20(E) NMSA 1978 providing that the transfer of a youthful offender to an agency responsible for incarceration of persons sentenced to adult sentences terminates the jurisdiction of the court over the child with respect to the

delinquent acts “alleged in the petition,” is inaccurate, as the delinquent acts are no longer allegations at the time of transfer. The language providing that the transfer terminates jurisdiction with respect to the delinquent acts “for which the child is adjudicated as a youthful offender” accurately reflects the youthful offender’s status at the time of transfer. It appears that the HB 536 amendment is cleanup for the purpose of accuracy in statutory construction.

AODA states that HB 536 would revise the statute to make plain that the charges against a child had been proved as required for them to be adjudicated as a youthful offender before a court can consider invoking an adult sentence. The statute requires to court make certain findings before considering imposition of an adult sentence, and specifically directs that the facts of the offense(s) the child was adjudicated to have committed be considered, along with their maturity, prior criminal history and other matters. By removing “alleged” as a modifier of “offense,” it would indicate the charges in the petition that initiated proceedings against the child had been proved so consideration of an adult sentence would then be proper. That is reiterated in the subsection regarding transfer of the child to legal custody of an agency responsible for incarceration of adults. By adding the phrase, “for which the child is adjudicated as a youthful offender,” as a modifier to delinquent acts and deleting, “alleged in the petition,” in subsection E. It is another indication that the charges had been proved.

The AGO states the following:

House Bill 536 attempts to limit a trial court’s consideration of certain factors in determining whether a juvenile may be sentenced as an adult. For a juvenile over the age of fourteen to be sentenced as an adult, the juvenile must first be adjudicated guilty of at least one of a few enumerated, violent crimes. Then, a court must carefully review several factors at an amenability hearing to determine if the juvenile may be rehabilitated by the age of twenty-one. These amenability factors largely focus on the juvenile rather than the offense committed. Only if a determination that the juvenile is not amenable to treatment may they be sentenced as an adult.

In *State v. Rudy B.*, the New Mexico Supreme Court reviewed the amenability factors in section 32A-2-20. Although they determined that most of the amenability factors focus on the juvenile, at least three of the factors focus on the offense. These “offense specific” factors are modified by House Bill 536 by removing the term “alleged.” By removing this term, a trial court may be limited to consider only those offenses for which the juvenile was adjudicated rather than charged. Since it is common for many charges to be dropped during the adjudication process, practically, this Bill could deprive judicial review of otherwise relevant factors. The Supreme Court already permits trial courts to give these relevant factors only the weight they sit fit. Therefore, this Bill may only serve to deprive a court of relevant information they were previously permitted to weigh.

Additionally, House Bill 536 likely fixes a referential error in subsections (G) and (H) of 32A-2-20. Subsections (G) and (H) refer to specified youthful offender offenses, which are defined in subsection (J) rather than subsection (I).

DUPLICATION

Duplicates HB 499.

ABS/bb/je