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FISCAL IMPACT REPORT

SPONSOR HRPAC **ORIGINAL DATE** 1/27/16
LAST UPDATED _____ **HB** 72/HRPAC
SHORT TITLE Allow Use Of Juvenile Disposition & Evidence **SB** _____
ANALYST Downs

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY15 | FY16 | FY17 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| Total | NFI | NFI | NFI | NFI | NFI | None |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of Bill

The House Regulatory and Public Affairs Committee substitute of House Bill 72 does not include any appropriations. The bill would amend the Criminal Procedure Act to allow a judge to consider an adult defendant's juvenile record when setting bail and conditions of release.

The bill also proposes amendments to Section 32A-2-18 NMSA 1978 to expand access to juvenile records by bypassing the requirement that records can only be accessed in the case of a felony conviction. If a juvenile disposition is considered, the bill maintains it must be confidential and reviewed "in camera," or excluding the public, to protect the privacy of the defendant. Evidence, documents, or motions pertaining to the use of the juvenile disposition will be sealed.

Finally, the substitute for HB 72 amends Section 32A-2-26 NMSA 1978, Sealing of Records, adding the ability for the court to set aside a sealing order to help in determining bail and conditions of release, or for sentencing.

FISCAL IMPLICATIONS

According to AOC, the only costs associated with this amendment of statute would be the minimal costs of updating and distributing the changes, and the prospective for increased caseloads in the courts. Additionally, there is potential for increased costs to the Public Defender Department in association with any prosecutions.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. According to the New Mexico Corrections Department (NMCD), the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer length of stay would increase that cost. In addition, sentencing enhancements could contribute to overall prison population growth as increased sentence lengths decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

SIGNIFICANT ISSUES

According to the AG and AOC in analyses of the original HB 72, the proposed new Section 32A-2-18(B) NMSA 1978 changes the protections granted to juvenile offenders. A juvenile disposition protects youthful offenders from the consequences of adult criminal behavior; however, if juvenile criminal records are available in adult trials, those protections can only prolong adult consequences instead of avoiding them. The substitute bill would only allow the review of juvenile records in private chambers, or "in camera," but would still alter original juvenile protections.

In addition, in analyses of the original HB 72, AOC, AODA, and CYFD discussed potential conflicts in the sealing of juvenile records, typically done when a child turns 18 or when the case is disposed. The substitute bill amends Section 32A-2-26, Sealing of Records, to allow judges to set aside a sealing order to determine conditions of release and sentence, and also requires evidence, documents, or motions pertaining to the use of the juvenile disposition to be sealed unless laws otherwise state it is not confidential.

Societal benefits, particularly to potential victims, would accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

PERFORMANCE IMPLICATIONS

House Bill 72 has the potential to impact two performance measures in courts: cases disposed as a percent of cases filed, and percent change in case filings by case type.

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