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FISCAL IMPACT REPORT

SPONSOR Chasey/Trujillo CH **ORIGINAL DATE** 1/21/2019
LAST UPDATED 2/4/2019 **HB** 56/aHJC

SHORT TITLE Prostitution as a Delinquent Act **SB** _____

ANALYST Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI	NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)

New Mexico Attorney General (NMAG)

Crime Victims Reparation Commission (CVRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee (HJC) Amendment to House Bill 56 replaces “appropriate treatment” with “community based” services in Section 4(B). Section 4(B)(1) also clarifies that an “appropriate placement” by the department must be “in the community.”

Synopsis of Bill

HB 56 proposes several substantive changes to the Children’s Code. It proposes to remove from the Code prostitution as a delinquent act. Thus, a child violating 30-9-2 NMSA 1978 (the statute criminalizing prostitution) would no longer be committing a delinquent act subject to punishment under the Code.

House Bill 56 proposes to amend the Code to allow a court to order the provision of family services in cases where the family’s child is alleged to have engaged in prostitution or been a victim of human trafficking, and the family has refused the services or Children, Youth and Families Department (CYFD) has exhausted “appropriate and available family services.”

House Bill 56 amends the Code to allow a law-enforcement officer to take into protective custody a child who the officer reasonably believes is engaged in prostitution or is a victim of

human trafficking. Consistent with the Code’s current language 32A-3B-3(A)) NMSA 1978 the law-enforcement officer would not need a court order to take custody of the child.

The bill also requires that, when law enforcement notifies CYFD that they have taken a child into protective custody, CYFD must refer the child to appropriate treatment and services regardless of whether CYFD returns the child to its parent, guardian, or custodian, or files a petition for custody.

FISCAL IMPLICATIONS

The amendment clarifies the treatment to be delivered, but should not have a fiscal impact. CYFD states that delinquency petitions for prostitution are rarely, if ever filed; and there have been no referrals to the juvenile justice services division on delinquency prostitution charges for the last three years.

CYFD does not anticipate a fiscal impact due to this bill. CVRC reports the funding capacity exists to address this increase if the child is determined to be a human trafficking victim, making them eligible for compensation.

SIGNIFICANT ISSUES

The AOC explains the HJC amendment “acknowledges that ‘appropriate treatment’ language could be interpreted to mean out-of-home placement during the 48-hour hold period. ‘Community based’ services will allow the child to remain in the community during the 48 hours prior to release to a family or the filing of a Families in Need of Court-Ordered Services (FINCOS) or abuse and neglect case.”

CVRC provides compensation to victims of violent crime for the state. Victims of human trafficking, including children, are eligible to receive compensation of up to \$20 thousand per incident. In addition, CVRC administers Victim of Crime Act funding, Sexual Assault Service Program funding, and State Sexual Assault services funding to sexual assault service providers and human trafficking service providers statewide. CVRC also administers a special appropriation of \$145 thousand for victims of human trafficking for crisis stabilization and services not allowable with federal funds.

CVRC explains the bill is an improvement to current law and will give law enforcement the ability to seek alternatives to detention to juvenile victims human trafficking. CVRC might see small increase in additional human trafficking cases should this amendment be enacted. However, law enforcement and service providers may need additional training to identify juvenile victims of human trafficking.

CYFD points out:

By specifically excluding children from being referred to juvenile probation or having delinquency petitions filed, it would help eliminate the possibility of a child engaged in prostitution being re-victimized via unjust process. Specifying the unavailability of a juvenile referral in favor of the possibility of protective custody could be beneficial for youth engaged in the sex trade, and could speed up access to needed services to address their exploitation.

ADMINISTRATIVE IMPLICATIONS

CVRC does not anticipate any significant administrative implications if this amendment is enacted.

OTHER SUBSTANTIVE ISSUES

The Attorney General explains the term “appropriate treatment and services” is not defined in Section 4 of House Bill 56, and subject to subjective interpretation by the department. Although it does not provide what division or officer of the department is responsible for making the determination. Length and frequency of the treatment or services is not defined either.

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