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FISCAL IMPACT REPORT

ORIGINAL DATE 02/11/11

SPONSOR Miera LAST UPDATED 03/11/11 HB 347/aHJC

SHORT TITLE Juvenile Detention Requirements Modifications SB _____

ANALYST Peery-Galon

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		*	*			

(Parenthesis () Indicate Expenditure Decreases)

*Fiscal impact is minimal to operating budgets (SEE – FISCAL IMPLICATIONS).

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 New Mexico Sentencing Commission (NMSC)
 Children, Youth and Families Department (CYFD)

No Responses Received From

Association of Counties

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee amendment for House Bill 347 clarifies that if a child is detained in a non-secure setting, the child is to be kept in regular sight supervision.

Synopsis of Original Bill

House Bill 347 amends several sections of the Children’s Code addressing detention of youth in adult facilities and the detention of 18 to 21 year olds.

Section 1 amends Section 32A-2-4.1 NMSA 1978. Children arrested and detained by law enforcement agencies for delinquent acts may be held in an adult jail for no longer than six hours. The child must be physically segregated by sight and sound from adult offenders. The

proposed legislation requires that the child be kept under continuous sight supervision, and released or detained pursuant to 32A-2-12 after six hours. The proposed legislation also requires quarterly reports regarding compliance with federal and state requirements, from adult facilities that temporarily hold alleged delinquent offenders.

Section 2 amends Section 32A-2-12 NMSA 1978 regarding the placement or detention of children alleged to be delinquent, pending a court hearing. The proposed legislation provides that a child may not be transferred to a county jail solely on the basis of turning 18 while being detained in a juvenile detention facility. If the children's court attorney requests a hearing, and provides notice to the child's attorney, the court shall hold a hearing to consider the transfer. The court may order the transfer only if it finds that the 18 year old poses a risk of harm to self or others.

The proposed legislation requires the arresting agency and the adult facility provide notice to the children's court attorney and the appropriate juvenile probation office whenever an 18 year old is taken into custody and held in an adult facility, on either a juvenile warrant, or an adult warrant or charge and an outstanding juvenile warrant also exists. The probation office must then provide notice to the children's court judge and to the attorney who represented the person in the juvenile proceeding. If the person is being held solely on a juvenile warrant the hearing must be held within twenty-four hours, excluding Saturdays, Sundays, and legal holidays. If the person is being held on an adult charge and a juvenile warrant the adult hearing procedures are to be followed. If the time frames for holding detention hearings are not met, the person may be released if the court determines all criteria for release from detention are otherwise met.

Eighteen year olds, subject solely to the jurisdiction of a children's problem-solving court or specialty court, who violate the terms of the court agreement may be held at: a detention facility, any other suitable place that is not a long term care facility and meets the standards of the Children's Code and federal law, or a county jail. If placed in a county jail, they may not be held for more than 48 hours. A Children's problem-solving or specialty court is defined as a court with a very limited caseload that deals with a narrowly defined category of juveniles or delinquent acts.

Jail directors shall presume that all persons 18-21 are vulnerable to victimization and take measures to protect them without diminishing their civil rights.

Section 3 amends 32A-2-19 NMSA 1978 regarding the disposition of adjudicated delinquent offenders. The proposed legislation requires the court to make a finding on the record that placing a child in a local detention facility is appropriate and will have a rehabilitative effect prior to placing the child in a local detention facility.

Children who are transferred to the Children, Youth and Families Department's custody for commitment are not eligible for time reduction for the time spent in detention awaiting adjudication.

Section 4 amends 32A-2-24 1978 regarding probation revocation and disposition. The proposed legislation requires the Children, Youth and Families Department to notify both the court and the district attorney of any warrant issued for a probation violation resulting solely from a violation of the probation agreement and not a new offense. The court may quash the warrant six months after its issuance if the person is 18 years of age or older, or six months after the person's 18th birthday if they were under 18 years of age at the time the warrant was issued.

FISCAL IMPLICATIONS

AODA noted that adult facilities may need extra personnel based on the new requirement that a child “be kept in continuous sight supervision.” Also, these adult facilities will now have to make quarterly reports, instead of annual, about the juveniles who have been in their custody.

AODA stated the new requirement for a “compliance monitor”, designated by the Children, Youth and Families Department, may need additional funding. Either the department will need to hire an employee to do this job throughout the state or use a current employee.

AODA also noted there may be additional court costs due to hearing being required of the children’s court before they can transfer a child who turned 18 years of age while in juvenile detention and a hearing being required within 24 hours of the arrest of a person 18 years of age or older on a juvenile warrant.

SIGNIFICANT ISSUES

NMSC reported the proposed legislation offers additional fine-tuning to the Children’s Code, which was extensively re-written in 2009. An important aspect of the proposed legislation is the proposed reports and inspections regarding compliance with federal and state requirements for temporary detention of alleged delinquent offenders. Also, the proposed legislation provides judges with discretion to determine the most appropriate placement for 18 year olds.

CYFD reported the proposed legislation makes the following important and needed changes to the Children’s Code:

- Ensure that adult jails and lockups that hold juveniles are doing so according to federal law and that inspections are allowed;
- Follow-up on changes from 2009 that children who turn eighteen while in a juvenile facility are not transferred without a hearing first;
- Clear up confusion around notification processes and ensure that there is timely notification so that children who are in detention are no held longer than needed;
- Allow for 18 year olds who are in specialty courts to be temporarily held in juvenile facilities if they violate the terms of their agreement, rather than in adult facilities;
- Ensure that 15 day commitments are only used if a judge first makes a finding as to the appropriateness of those commitments prior to sending a youth to a facility;
- Clarifying that children may not have time taken off their commitments for time spent in detention prior to adjudication, thereby allowing for full rehabilitation of a juvenile commitment to occur; and
- Clear up old juvenile warrants that are currently difficult for adult courts to deal with.

PERFORMANCE IMPLICATIONS

AOC noted the proposed legislation may have an impact on the measures of the district courts in the following areas: cases disposed of as a percent of cases filed, and percent change in case filings by case type.

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