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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/19

SPONSOR Ruiloba LAST UPDATED _____ HB 540

SHORT TITLE Delinquency Act Changes SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 403, HB 56

SOURCES OF INFORMATION

LFC Files

Responses Received From

Children, Youth and Families Department (CYFD)
 Administrative Office of the Courts (AOC)
 Law Offices of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)

SUMMARY

Synopsis of Bill

House Bill 540 amends numerous sections within the Delinquency Act to provide for standardized risk assessment and screening tools adopted by CYFD to inform decisions related to detention, diversion, services, case processing, disposition, and treatment. It also deletes the term “parole” throughout the act. More specifically:

Section 1: Amends the Delinquency Act to revise the definition of “delinquent child” (setting a minimum of 10 years of age) and to add new definitions for “diversion,” “risk assessment,” “risk screening,” “status offense,” and “technical violation.”

Section 2, 3 and 6: Amends the duties of Juvenile Probation Services (JPS) to allow them to conduct a risk screening during the initial preliminary inquiry to help determine whether participation in diversion or community-based services would be appropriate.

Also requires JPS to conduct a risk assessment for each youth charged in a delinquency complaint and on whom a petition is filed. Prior to disposition, JPS shall provide the results of the risk assessment to assist all parties and the court in determining an appropriate disposition of the child's case, including diversion. Further, probation services and juvenile correctional facilities are required to conduct a new risk assessment every six months or when significant changes occur.

Sections 4 and 5: Increases the minimum age at which a child can be placed in detention from 11 to 12 years of age. Prohibits a child from being placed in detention solely based on a technical violation of probation unless a written determination is made by the court that the violation is based on the child (1) absconding from supervision; (2) having been referred to a specialty court (3) posing a substantial risk of harm to the child's self; (4) posing a substantial risk of harm to others or (5) demonstrating the child may leave the jurisdiction of the court. Additionally, placement in detention may occur if no alternatives to detention are available or appropriate.

Section 7: Requires a court include in its dispositional judgment findings on the results of assessments and screenings required in Section 6. If a child is committed to the custody of a facility for the care and rehabilitation of delinquent children, the court must find that an appropriate alternative service or program in the community does not exist or was previously used by the child without success and that the child poses a risk to the community based on the child's risk assessment, the seriousness of the act committed by the child, and the child's history of delinquency and any other relevant factors.

Sections 8 and 9: Requires, in determining whether to release a child from probation, supervision or commitment or extend a commitment, due consideration must be given to a child's risk of reoffending, as determined by a risk assessment, the seriousness of the act for which the child was adjudicated delinquent, and the child's progress in meeting treatment goals.

The effective date of this bill is July 1, 2019.

FISCAL IMPLICATIONS

CYFD reports implementation of a new risk assessment tool which fulfills all the mandates of HB450 will have a fiscal impact on the agency that cannot be absorbed by existing resources. On the other hand, AOC notes that, while this bill requires courts to make additional findings when a child is detained due to a technical violation and to consider additional information from risk screenings and assessments when making dispositions and determinations about extensions of commitments in delinquency cases which actions could lead to a small increase in judicial time, HB 450's intent is to decrease the number of delinquency cases handled in the judicial system through the use of risk screening and diversion and therefore has the potential to reduce caseloads overall. Similarly, LOPD suggests the diversion programs envisioned by the bill could result in early resolution of juvenile matters and ultimately reduce its workload.

SIGNIFICANT ISSUES

AOC comments this bill reflects the national and New Mexico-based movement away from detention and court sanctions for young people involved in the juvenile justice system. This

movement is based on research showing that many young people were being detained when they did not pose a risk to themselves or the community, that unnecessary detention harms young people, and that unnecessary detention is costly and does not reduce recidivism. Some of this research and detention alternative principles are summarized [here](#). The Annie E. Casey Foundation has been the leader nationally in this work and has developed a [national Juvenile Detention Alternatives \(JDAI\) Program](#) that has been operating for the past years. Bernalillo County's JDAI program, which uses the Annie E. Casey framework, has been named as a national model site for their work in reducing detention and developing alternative programs for young people in the juvenile justice system. More information about their work can be found [here](#). New Mexico's CYFD also has a [statewide JDAI program](#) that works to reduce unnecessary detention in delinquency cases. These initiatives have also worked to develop screening tools to assess risk.

CYFD first notes the removal of the term "parole" throughout the act, advising that parole is no longer a term used with respect to juveniles. The agency then reports:

this bill simply re-states many systems that already exist, and are already in use, concerning the process of adjudicating and diverting youth in the juvenile justice system. Of the total 8,804 delinquent referrals to CYFD/Juvenile Justice in FY2017, 4,540 (51.6 percent) were handled informally, via front-end diversion processes; 1,248 referrals for prosecution to the district attorney were rejected (29.7 percent); and a total of 118 children were adjudicated to either a CYFD commitment or into detention (2.6 percent).

According to CYFD, changing the age of a delinquent youth to 10 years old and above will have little impact, as youth under the age of 10 account for 0.008 percent and 0.009 percent of youth referred for delinquent offenses in FY17 and FY18, respectively.

With respect to a risk assessment tool that will fulfill the mandates of the bill, CYFD reports it currently uses the structured decision making tool. It advises that this tool is not used to inform disposition decisions, as disposition and adjudication often happen on the same day. It is not designed to determine supervision lengths or lengths of stay, and it is not being used to prioritize who receives services and to match youth to services that meet their needs. As a result, CYFD warns that fulfilling the mandate of this bill will require the identification and implementation of a tool or the re-direction of existing resources to develop and implement a validated tool for determining diversionary appropriateness. CYFD cautions that, while implementation of a new risk screening tool has the potential to increase or strengthen diversion opportunities, adequate community resources and programs *must* be available to support any increase in the diversion population to avoid an unfunded increase of formal supervision caseloads.

Both AOC and NMAG question whether it is the intent of the bill to require a risk assessment of every child prior to disposition. AOC suggests that ,if a case is referred to a diversion program or otherwise handled informally, there is no requirement of a risk assessment for the group of children who would most benefit from one those children who do not pose a significant risk to themselves or the community and who can receive services without court intervention. This language might be amended to require rather than the permissive allow a risk assessment for any child "who is the subject of a complaint alleging delinquency." See Section 2(B)(3) and Section 3(B)(2). Similarly, NMAG points out:

The bill does not propose amendment to Section 32A-2-17(A), which lists the various

predisposition reports that must be provided to the court within five days before disposition or sentencing. None of those reports includes a risk assessment. The proposed amendment to Section 32A-2-17(B) requires CYFD to conduct a pre-adjudication risk assessment and requires juvenile probation services to submit a report of the risk assessment to the parties and to the court. Section 32A-2-17(B), however, pertains to evaluations the court may order when there are indications that the child may have a mental disorder or developmental disability. Placement of the requirement for a pre-adjudication risk assessment in Section 32A-2-17(B) suggests that the risk assessment is not required in every case, but only when there are indications that the child has a mental disorder or developmental disability. Moreover, other references to the risk assessment are to the risk assessment performed “in accordance with Section 32A-2-17,” which, as discussed above, appears to require a risk assessment only when there are indications that the child has a mental disorder or developmental disability.

Further, AOC suggests if the risk assessment is to be conducted before adjudication, it might be more appropriate to include this proposed language (Section 6(G) and Section 7(A)) in Section NMSA 32A-2-16, which deals with adjudicatory hearings, or create a new section of the Delinquency Act that addresses with risk assessments generally and include this language and the other proposed new subsections in Section 32A-2-17 in this new section.

PERFORMANCE IMPLICATIONS

AOC reports the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed,
- Percent change in case filings by case type.

CYFD states is has performance measures concerning the progress of children through the detention system.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB450 relates to SB403, which establishes a Juvenile Parole Board

TECHNICAL ISSUES

Page 19, line 12, contains a reference to mental health screening that is not otherwise addressed in this section.

MD/al/gb