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FISCAL IMPACT REPORT

ORIGINAL DATE 2/20/07

SPONSOR Miera LAST UPDATED _____ HB 1040

SHORT TITLE Delinquency Code Children's Mental Health SB _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY07	FY08	FY09	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 515 regarding delinquency records, Companion to HB637
 Duplicates Appropriation in the General Appropriation Act
 Relates to Appropriation in the General Appropriation Act

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Public Defender Department (PDD)
- Public Education Department (PED)
- Children, Youth and Families Department (CYFD)
- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)

SUMMARY

Synopsis of Bill

House Bill 1040 proposes to amend the Delinquency article of the New Mexico Children's Code related to children subject to delinquency petitions who have or may have a developmental disability or mental disorder as defined in that section of the Code. The proposed amendments:

- Section A2: When there is a question about a child's competency, the Children's Court Judge no longer initiates involuntary placement, but instead requests that the Children's Court Attorney petition for that child's placement. Essentially shifting from the Children's Court Judge to the assistant district attorney the responsibility for initiating involuntary commitment proceedings
- Section H: Clarifies that when there is a petition for the involuntary placement/treatment, the child is entitled to all the substantive and procedural protections detailed in Children's Mental Health and Developmental Disabilities Act (CMHDDA).

- Section I: Child only receives a treatment guardian if the child is resident of residential treatment or habilitation program as defined in CMHDDA, and that appointment of the guardian occurs pursuant to CMHDDA.
- Section J: No proceeding under the Delinquency Act will be combined with a proceeding under the CMHDDA.

FISCAL IMPLICATIONS

There would be a possible fiscal impact to Local Education Authorities (LEA) for an Individual with Disabilities Education Act (IDEA)-eligible student, who is court ordered or involuntarily placed in a treatment center, in order to provide a Free and Appropriate Public Education (FAPE).

SIGNIFICANT ISSUES

Language in each of the proposed amendments should be analyzed with the proposed amended language of Section 32A-2-21 (J) in mind, to wit: the possible interpretation that upon involuntary placement, the State's delinquency petition must be dismissed in order to avoid commingling of a delinquency proceeding and a proceeding under the Children's Mental Health/Developmental Disabilities article of the Code.

This bill clarifies the distinction between delinquency proceedings and proceedings under the CHMDDA, insuring the rights of the children. It clarifies that those children whose competency is questioned in a delinquency proceedings are entitled to all the protections of children who may be involuntarily treated. This bill is in accord with the goals of the delinquency act and the CMHDDA.

PERFORMANCE IMPLICATIONS

Clarifying the distinction between proceedings under the delinquency act and the CMHDDA may help the PDD in its representation of juvenile offenders.

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

ADMINISTRATIVE IMPLICATIONS

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and petitions for placement and other proceedings required being separate. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 515 regarding delinquency records, Companion to HB637

TECHNICAL ISSUES

- (1). The proposed language regarding initiation of involuntary commitment proceedings is discretionary with both the court and the children's court attorney. ". . .the court may . . . request the children's court attorney to petition for that child's involuntary residential placement . . ." This language departs from the language of Section 32A-6-13(A), which allows " any person" believing that a child may suffer from a developmental disability or mental disorder to request filing of an involuntary placement petition. The discretionary language regarding initiation of the process may be appropriate in a delinquency context, inasmuch as not every child who may be mentally disordered or developmentally disabled within the meaning of the Code will need or benefit from such highly restrictive placement. On the other hand, this language may prove a detriment to the assessment process that actually determines a child's treatment needs and the clinical propriety of an involuntary placement. Finally, please bear in mind that current workloads and staffing allocations of Children's Court judges and attorneys may dictate that the discretionary nature of the language may preclude the requesting or filing of such petitions.

The Code currently requires that children subject to the Court's delinquency jurisdiction and mental health/developmental disabilities jurisdiction, as in this section, be placed in the legal custody of CYFD (the Department) during the period of placement. This is appropriate, inasmuch as the Department will be responsible for payment of the child's residential treatment/habilitation costs. In a time when state dollars for residential placement of children are scarce to nonexistent, departmental involvement and support is vital to effectuation of this provision. Historically, CYFD is reluctant to take on additional custody obligations regarding juveniles subject to the Court's delinquency jurisdiction. In order for the involuntary commitment process to function as clearly intended by the current legislation, the proposed amendment should require the court to order initiation of commitment proceedings by the CYFD attorney, representing the prospective custodian, rather than the assistant district attorney who may ultimately lose jurisdiction over the case. See analysis of proposed amendment to Section 32A-2-21(J), below. Although the current statute requires the district attorney to initiate commitment proceedings, the legislature may wish or need to hand over this responsibility to CYFD attorneys in order to effectuate the separation of proceedings required by -21(J).

- (2) It is appropriate to require provision of all substantive and procedural rights to children who are subject to involuntary placement petitions. The rights of children as set out in the Code vary from article to article. If the legislature intends to adopt the proposed separation of delinquency matters and commitment proceedings, it would be more specific and appropriate to refer directly to the article and section setting forth the rights intended to be provided, and perhaps enumerate them here. The rights enumerated in Section 32A-2-13 (F) seem appropriate in this context.
- (3) The proposed language of Section 32A-2-21 (I) prohibits appointment of a treatment guardian unless a child is actually in residential placement. This prohibition can create a disturbing scenario for children in voluntary outpatient treatment. Certain therapeutic modalities, including prescribed medications, may be in the best interests of these children, who are not deemed legally competent to consent or withhold consent to treatment and whose parents cannot or will not agree to these treatment modalities. Withholding treatment guardians from children in outpatient treatment may deprive them of necessary and

clinically appropriate treatments. Provision of a treatment guardian to a child in non-residential treatment should be decided on a case-by-case basis and should not be subject to the blanket prohibition of this language.

- (4) The proposed language of Section 32A-2-21 (J) appears to mandate total separation of delinquency proceedings and any proceeding under the mental health/developmental disabilities article. This procedure is inconsistent with the proposed amendment to section -21 (A) (2), currently requiring assistant district attorneys to file commitment petitions. See analysis of that section, above. A further concern is that the nonspecific language of the proposed section -21 (J) may lead courts to dismiss delinquency petitions of children involuntarily committed. This proposed legislation should be closely analyzed in conjunction with Section 32A-2-21 (G), the competency section of the delinquency article. Not every child committed for residential placement will meet criteria for a finding of incompetence, and vice versa. One possible interpretation of proposed -21 (J) would necessarily equate the two situations. This interpretation would deprive the Court and the State of the ability of hold children accountable for their actions and protect the public interest as required by Section 32A-2-2 (A). The language should be redrafted to clarify that, while proceedings under the two articles should be separated, i.e. hearing before a separate judge, without involvement of the assistant district attorney, etc., the delinquency proceeding may go forward absent the issue of competency and the required stay.

OTHER SUBSTANTIVE ISSUES

The New Mexico Children’s Mental Health and Developmental Disabilities Revision Task Force reports that the Section 32A-2-21 amendment “is necessary to resolve ambiguity about the need to petition the court to proceed under the Children’s Mental Health and Developmental Disabilities Code when addressing the needs of children requiring involuntary placement for mental health or developmental disabilities services.”

The current law allows the court to initiate proceedings for the involuntary placement of a child. HB 1040 requires the court to request the children’s court attorney to petition for a child’s involuntary residential placement. The bill further provides that a proceeding under the Delinquency Act shall not be combined with a proceeding under the Children’s Mental Health and Developmental Disabilities Act. Thus, it appears that the number of proceedings associated with the disposition of a child with a mental disorder or developmental disability in a delinquency proceeding will increase.

Section 1(E) provides that when a child in CYFD custody needs involuntary placement as a result of a mental disorder or developmental disability, the department must request the children’s court attorney to petition for the child’s placement. This procedure is echoed in the Section 1(A) amendment.