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FISCAL IMPACT REPORT

SPONSOR HJC **ORIGINAL DATE** 02/13/09
LAST UPDATED 03/16/09 **HB** CS/117/aSJC
SHORT TITLE Children in Meth Houses as Child Abuse **SB** _____
ANALYST Hoffmann/Hanika-Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	None See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

The Administrative Office of the Courts (AOC)
The Administrative Office of the District Attorney (AODA)
The Public Defender Department (PDD)
Department of Health (DOH)
Children, Youth and Families Department (CYFD)
New Mexico Corrections Department (NMCD)

No Response

Attorney General's Office (AGO)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee Amendment removes the term "negligently" and leaves the proposed terms "knowingly and intentional" to describe evidence of abuse when a person exposes a child to the use of methamphetamine.

SIGNIFICANT ISSUES

The bill may not be clear if exposing a child to methamphetamine production is the same as exposing a child to methamphetamine use.

Synopsis of HJC Substitute

House Judiciary Committee Substitute for House Bill 117 would amend Section 30-6-1 NMSA 1978, titled “ABANDONMENT OR ABUSE OF A CHILD.” The bill adds a new Subsection J that states “Evidence that demonstrates that a child has been knowingly, intentionally or negligently exposed to the use of methamphetamine shall be deemed prima facie evidence of abuse of the child.”

The original House Bill 117 had amended Section 30-6-1 NMSA 1978 by adding “...placed in a home environment where methamphetamine is used...” to the definition of child abuse.

FISCAL IMPLICATIONS

House Judiciary Committee Substitute for House Bill 117 makes no appropriations.

The CYFD states that criminal prosecution as a result of this bill may impede efforts at rehabilitation and permanency planning in civil abuse and neglect cases where methamphetamine is involved; may create delays in achieving permanency leading to increased time in foster care; and lead to increased costs for foster care maintenance payments.

The NMCD claims that the additional felony convictions resulting from the expansion of this felony would increase the NMCD’s costs by leading to minimal to moderate increases to the inmate population and probation/parole caseloads. The bill seems unlikely to lead to a substantial number of new convictions, or to result in a substantial increase in the NMCD’s inmate population or probation/parole caseloads. However, it is always difficult to predict or estimate the ultimate effect of any new crime bill with any certainty, especially if it turns out that many adults are leaving their children at home where methamphetamine is used.

Though no estimate is provided, the Administrative Office of the District Attorney states that the frequency of this kind of behavior is such that there could be significant increased demands on police, prosecution, defense counsel, courts and the Department of Corrections.

SIGNIFICANT ISSUES

The CYFD’s data suggests that methamphetamine use impacts the lives of children in the foster care system. In first quarter of FY09, methamphetamine was identified as a factor in the case for approximately 22% of the children in foster care in the state of New Mexico. The pursuit of criminal charges often delays civil abuse and neglect proceedings as the time frames for civil cases as required by New Mexico state law and federal law (Adoption and Safe Families Act) are more rapid than those for criminal cases. A parent facing criminal charges is often unable to or reluctant to fully engage in a civil case until the criminal matter, including incarceration, has been resolved.

The Administrative Office of the Courts notes that this bill could 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.

The DOH observes that measures to address child protection issues raised by illegal manufacture of methamphetamine were seen in several states in 2005. Arkansas, Mississippi, Oregon and Virginia expanded their child abuse and neglect statutes to include exposing a child to methamphetamine. Indiana, Montana, Minnesota and New York now require that reports be filed with appropriate agencies when a child is discovered in a home with a methamphetamine laboratory. Other states created separate criminal offenses and increased penalties for child endangerment related to methamphetamine production and use.

PERFORMANCE IMPLICATIONS

The CYFD has performance measures related to the percent of children reunified with their natural families within twelve months, and the percent of children adopted within twenty-four months of entry into foster care.

OTHER SUBSTANTIVE ISSUES

During the 2004 session, the New Mexico legislature passed House Joint Memorial 77. This memorial called attention to the need to protect New Mexico's children from the dangers of methamphetamine in their environment. These dangers include the materials and equipment used in the production of methamphetamine, the health risks to children exposed to methamphetamine, and the threat of methamphetamine-addicted parents to the stability of the family unit.

The Administrative Office of the District Attorney and the Public Defender Department state that the current statutory definition of child abuse already includes the following:

- NMSA 30-6-1(D) (2), which defines child abuse as causing or permitting a child to be “placed in a situation that may endanger the child’s life or health; and
- NMSA 30-6-1(I), which provides that evidence that a child left in “any premises” that “contains chemicals and equipment used or intended for use in the manufacture of a controlled substance shall be deemed prima facie evidence” of child abuse.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

According to the AODA and PDD, defendants could still be prosecuted under the current statute.

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