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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/09

SPONSOR McSorley LAST UPDATED 02/03/09 HB _____

SHORT TITLE Determination Of Adult Sentence For Juveniles SB 7/aSJC

ANALYST Hoffmann/Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$0.1	\$0.1	\$0.1		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General’s Office (AGO)
 New Mexico Sentencing Commission (NMSC)
 Public Defender Department (PDD)
 Children, Youth and Families Department (CYFD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of SJC Amendment

The SJC amendment strikes a proposed revision to page 14, lines 24 and 25, to keep in statute language that states: “A youthful offender or a serious youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences”. The SJC amendment removes the proposed requirement that the child first attain the age of eighteen.

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The SJC amendment also removes the proposed strike to page 15, lines 11 through 16, to keep in statute language that states “A child fourteen years of age or older, charged with first degree murder, but not convicted of first degree murder and found to have committed a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, is subject to the dispositions set forth in this section”.

The SJC amendment further removes the proposed strike to page 15, line 17, to keep in statute language that states: “A child fourteen years of age or older charged with first degree murder, but found to have committed a delinquent act that is neither first degree murder nor a youthful offender offense as set forth in Subsection I of Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent offender subject to the dispositions set forth in Section 32A-2-19 NMSA 1978.”

SIGNIFICANT ISSUES

Youthful offenders and serious youthful offenders given an adult sentence will not need to reach the age of 18 (as proposed in the original bill) before being transferred to the legal custody of an adult correctional system. The amendment also attempts to keep the distinguishable difference between the categories of “Serious Youthful Offender” and “Youthful Offender”.

Synopsis of Original Bill

A. The legislation amends section 31-18-15.3 and 32A-2-3, NMSA 1978, and other sections of the New Mexico Statutes relevant to the disposition of “Serious Youthful Offenders” such that a hearing on amenability to treatment would be required for juveniles over the age of fifteen (15) found guilty of First Degree Murder in order for State to have the authority to pursue an adult sentence and for the sentencing Court to have authority to impose an adult sentence. Presently, an amenability to treatment hearing is neither necessary nor called for in these circumstances for an adult sentence to be imposed, and is only required in those instances where the accused juvenile is found guilty of offenses qualifying him or her to be treated as a “Youthful Offender.” Juveniles accused of and found guilty of First Degree Murder are presently only treated as “Youthful Offenders” and subject to an amenability to treatment evaluation and hearing if the accused is fourteen (14); for those juveniles fifteen (15) to seventeen (17) who are accused and found guilty of First Degree Murder, an adult sentence is automatically provided for by law.

B. The proposed changes to the Children’s Code and the relevant portions of the Criminal Code allow a juvenile ages fifteen (15) to seventeen (17) who is accused and convicted of First Degree Murder to be classified and treated as a “delinquent child” if the Court determines at an amenability to treatment hearing that he or she is amenable to treatment.

C. Also provides that the proper jurisdiction for “Serious Youthful Offender” cases resides in the Children’s Court, just as it does for delinquency and “Youthful Offender” proceedings, and that such matters may not be pursued with the Grand Jury or filed with the Magistrate Court via a Criminal Complaint for purposes of holding a preliminary examination as they are presently. Directs that transfer of “Serious Youthful Offender” cases to the Children’s Court must occur, just as with delinquency and “Youthful Offender” proceedings

D. If the juvenile accused of First Degree Murder and of being a “Serious Youthful Offender” is indeed convicted of First Degree Murder, this proposed change requires that instead of the Adult Probation and Parole Office (APPO) preparing a predisposition report, the Juvenile Probation and Parole Office (JPPO) shall prepare a predisposition report focusing on the juvenile’s amenability to treatment. Once JPPO does so, then the Court can make either of the two findings presently allowed for “Youthful Offenders” – (1) imposition of an adult sentence if the Court does not find that the juvenile convicted of First Degree Murder is amenable to treatment and the judge makes the necessary findings pursuant to Section 32A-2-20 or (2) imposition of a

disposition as a juvenile delinquent if the Court is persuaded that the juvenile is amenable to treatment.

E. Section 32A-2-20 is specifically amended by this proposed legislation to provide that the Court has the discretion to impose either an adult sentence or juvenile sanctions for either a youthful offender or serious youthful offender case.

F. The legislation further provides that the District Attorney's Office in any jurisdiction in which a "Serious Youthful Offender" murder occurs must file a "Notice of Intent to Pursue Adult Sentence" within ten working days of the filing of a Petition against the "Child," as is presently only necessary in "Youthful Offender" cases. Moreover, the proposed legislation also provides that the Court can only impose an adult sentence in a "Serious Youthful Offender" matter if it makes the following findings:

- the child is not amenable to treatment or rehabilitation as a child in available facilities; and
- the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

In considering the sentence or disposition to impose, the proposed legislation also would require the judge in a "Serious Youthful Offender" to consider each of the following factors:

- (1) the seriousness of the alleged offense;
- (2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;
- (3) whether a firearm was used to commit the alleged offense;
- (4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;
- (5) the sophistication and maturity of the child as determined by consideration of the child's home, environmental situation, emotional attitude and pattern of living;
- (6) the record and previous history of the child;
- (7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and
- (8) any other relevant factor, provided that factor is stated on the record.

These factors are currently only relevant to determining whether a juvenile found guilty of a "Youthful Offender" offense shall be sentenced as an adult or as a delinquent child.

G. The proposed legislation also clarifies that a "Serious Youthful Offender" given an adult sentence, just like a "Youthful Offender" given an adult sentence, shall be treated as an adult offender and upon attaining his or her eighteenth birthday, shall be transferred to the legal custody of an agency responsible for incarcerating adults. Likewise, if the "Serious Youthful Offender" has been given a juvenile disposition, then he or she may have his or her commitment in the care of a CYFD facility extended to the age of twenty-one, just like a "Youthful Offender."

FISCAL IMPLICATIONS

The New Mexico Corrections Department notes that while the number of serious youthful offenders sentenced as adults is already small (the Department has less than five such offenders in prison), the number will likely decrease as those offenders determined to be amenable to treatment will be sentenced as minors or juveniles and never come into the adult prison system. This will likely ultimately result in an even smaller number of serious youthful offenders in prison and/or placed on probation or parole. This will ultimately reduce the Department's prison and probation/parole costs by a minimal to moderate degree.

The contract/private prison annual cost of incarcerating an inmate is \$27,761 per year for males. The cost per client to house a female inmate at a privately operated facility is \$31,600 per year. Because state owned prisons are essentially at capacity, any net increase in inmate population will be housed at a contract/private facility.

The cost per client in Probation and Parole for a standard supervision program is \$1,205 per year. The cost per client in Intensive Supervision programs is \$3,848 per year. The cost per client in Community Corrections is \$3,830 per year. The cost per client per year for male and female residential Community Corrections programs is \$25,161.

There may be some very minimal decreases in the Department's revenue (caused by the loss of probation/parole supervision fees that would have been paid by serious youthful offenders sentenced as adults and then placed on probation or parole for their crime of first degree murder). However, any revenue losses of probation and parole supervision fees would be more than offset by the cost savings associated with fewer serious youthful offenders being sentenced to prison as adults.

The Public Defender Department states that passage of this bill might have a minimal fiscal impact on the PD's, DA's and the courts, and any slight increase in expert funding for amenability hearings would likely be absorbed in the ordinary course of business.

SIGNIFICANT ISSUES

With regard to the policy direction of this amendment, the Public Defender Department states that New Mexico's juvenile sanctions under the Children's Code are about rehabilitation and not punishment. Passage of this bill would be consistent with the Children's Code directives.

Presently, serious youthful offenders are not eligible for juvenile commitments. However, unlike a life sentence for an adult, which cannot be suspended, deferred, or mitigated, the court may impose up to a life sentence for a serious youthful offender. Typically, expert witnesses are retained for the sentencing hearing, with the hope that the court will impose less than a life sentence for a serious youthful offender. Passage of this bill would simply redirect the focus of expert testimony to justify the presumed amenability to treatment and to rebut the State's expert witnesses.

The language of this bill suggests that New Mexico may wish to extend greater protections to juveniles in general. This is consistent with the purpose of the Children's Code.

The Administrative Office of the District Attorneys’ analysis of this bill states that the most significant factor of the legislation is that it basically renders meaningless the entire category of “Serious Youthful Offender,” leaving it redundant and superfluous. Historically, the entire purpose behind the creation of the “Serious Youthful Offender” category was to recognize that for juveniles of less tender years – those in their mid- to late- teens – accused of and found guilty of First Degree Murder, the legislature was making a conscious decision as the people’s representatives to focus more on deterrence and punishment than on rehabilitation. Given that in New Mexico, First Degree Murder involves only the following three, most egregious types of murder – (1) by any kind of willful, deliberate and premeditated killing; (2) in the commission of or attempt to commit any felony; or (3) by any act greatly dangerous to the lives of others, indicating a depraved mind regardless of human life – it can hardly be pretended that the juveniles who will be sentenced for this crime are guilty of anything less than the gravest crime New Mexico law recognizes and punishes. Suddenly merging the categories of “Serious Youthful Offender” and “Youthful Offender” and leaving no distinguishable difference between the two under the law is a drastic step; one that would not ordinarily be undertaken without the proponents of such a drastic change demonstrating a terrible flaw in the present structure or a system that lends itself to repeated (as opposed to fluke) miscarriages of justice.

PERFORMANCE IMPLICATIONS

CYFD states that there are no major performance implications if this bill passes. Currently, CYFD measures several indicators of recidivism including the rate at which youth are committed to a New Mexico Corrections Department facility after release or discharge from a CYFD juvenile justice facility. The percentage outcomes for the previous three fiscal years are as follows:

FY06	FY07	FY08
9.1 %	6.6 %	5.0 %

For CYFD, youth falling under the dual sentence provision of this bill will be excluded from these performance calculations as these clients are neither released nor discharged, but instead transferred to adult jurisdiction.

According to the Administrative Office of the Courts, 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
- Time to disposition

ADMINISTRATIVE IMPLICATIONS

According to the Administrative Office of the District Attorneys this legislation would impose modest administrative implications that go beyond ordinary post-legislative printing of new statute books. The most significant impact will be on the Juvenile Probation and Parole Office (JPPO), which will now be called upon to prepare predisposition reports for a category of juvenile offense, the “Serious Youthful Offender,” where that had not been necessary previously. The legislation also provides that JPPO would have to potentially prepare two separate predisposition reports in any “Serious Youthful Offender” matter in which the Court ultimately

is persuaded as to amenability to treatment. In addition, the Adult Probation and Parole Office (APPO), which currently prepares the predisposition reports in “Serious Youthful Offender” matters, is completely cut out of the loop by the proposed legislation, even if the Court finds that an adult sentence is appropriate. This is in spite of the fact that APPO will be far more familiar than JPPO with things such as therapeutic communities and other programming options available to someone incarcerated with the Department of Corrections as opposed to CYFD. Depriving the Courts of APPO’s input on these cases is unlikely to be well received by the State’s District Court judges, but the proposed legislation as drafted does not appear to leave the Court the option of ordering input from APPO as well.

ALTERNATIVES

The Administrative Office of the District Attorneys suggests that rather than simply leaving the “Serious Youthful Offender” category as-is and not imposing the amenability to treatment standard on sentencing of those juveniles older than fifteen found guilty of First Degree Murder, one alternative to the proposed legislation would be to redefine who is a “Serious Youthful Offender” by raising the age at which a juvenile accused and then found guilty of First Degree Murder fits into that category. Presently if a juvenile is fourteen (14) or younger, the matter is treated as a “Youthful Offender” matter and the full panoply of amenability to treatment provisions are brought to bear. For those juveniles, the Court has complete sway to impose juvenile sanctions or an adult sentence (if the proper Notice of Intent was timely filed by the prosecution) depending upon the outcome of the amenability proceedings. If there is a fear on the part of the legislature that some juveniles who are perhaps too young to face adult sanctions are being caught up in a “Serious Youthful Offender” net, then rather than redefining the category to the point of redundancy and meaningless as S.B. 7 does, why not raise the age to 16 for instance for “Serious Youthful Offender” provisions to apply? Another reasonable alternative before enacting what amounts to a drastic legislative change would be for the proponents of the change to demonstrate statistically that there is a need for such a fundamental retooling of the Children’s Code, perhaps by commissioning a study or given the present budget crisis, collaborating with the UNM sociology or criminology departments or the School of Law to see if one of these academic entities could undertake such a study. As things stand presently, however, the proposed legislation makes dramatic changes, including rendering the “Serious Youthful Offender” provisions meaningless and practically speaking indistinguishable from those involving the “Youthful Offender,” in the absence of evidence to demonstrate a good reason why.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

For the New Mexico Corrections Department, youthful offenders given an adult sentence and serious youthful offenders will be transferred to the legal custody of the New Mexico Corrections Department, regardless of age.

The Administrative Office of the District Attorney notes that for their agency, the consequence of not enacting the bill will be almost nil, as opposed to the potentially harmful consequences of enacting the proposed legislation as it presently stands. Not enacting S.B. 7 means simply that the legislature is continuing to define a subset of juvenile offenses – First Degree Murders committed by those age fifteen (15) or older – as grievous enough to require shifting the emphasis of any dispositional/sentencing proceedings away from the rehabilitation of the individual defendant in a juvenile setting and toward the protection of the public, the deterrence

of further heinous crimes by that specific person and by others like him or her, and the punishment of a terrible and irreversible wrong.

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