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FISCAL IMPACT REPORT

	02/09/13		
	ORIGINAL DATE	02/25/13	
SPONSOR <u>Ortiz y Pino</u>	LAST UPDATED	03/13/13	HB
			<u>203/aSPAC/aSJC/</u>
SHORT TITLE <u>Juvenile Detention Requirements</u>			SB <u>aHCPAC</u>
		ANALYST	<u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	\$75.0*	\$75.0*	\$150.0*	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

*Amounts represent minimum impact anticipated. See Fiscal Implications

Conflicts with and relates to HB 142

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Attorney General's Office (AGO)
 Public Defender Department (PDD)
 Children, Youth & Families Department (CYFD)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee amendment to Senate Bill 203 strikes Subsection 2H concerning a person 18 but less than 19 years of age subject solely to the jurisdiction of a children's problem-solving or specialty court who violates the terms of the court agreement.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to SB 203 clarifies that when a child is arrested for an alleged delinquent act and is temporarily held in an adult lock-up or other custodial setting with adult offenders, the sight supervision must be on at least 15 minute intervals and after six

hours, the child must be removed from secure hold and placed in a non-secure setting. This amendment also removes language prohibiting an adjudicated delinquent from receiving credit for time served in detention while awaiting adjudication.

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to SB 203 clarifies that when a person who is 18 or older is taken into custody and transported to an adult facility solely on a juvenile warrant, if the 24 hour time frame (excluding weekends and holidays) for holding a detention hearing is not met for any reason, the person must be released.

Synopsis of Original Bill

Senate Bill 203 amends the Delinquency Act of the Children's Code to:

- Require that a child alleged to be delinquent who is temporarily placed in an adult lock-up be within sight supervision and be released after 6 hours if not placed in a child-appropriate facility;
- Require quarterly rather than yearly reporting by any adult facility that has held children which reports must contain specific additional information, collected by the CYFD and delivered to the Juvenile Justice Advisory Committee (JJAC);
- Require all adult facilities used for holding alleged delinquent children allow a compliance monitor "designated" by CYFD to visit and inspect them for compliance with all applicable federal and state requirements for the management of juveniles;
- Limit placement or detention of a child alleged to be delinquent (except those subject to the temporary six hour hold) in adult county detention centers and municipal jails unless certified by the department or approved by that compliance monitor;
- Remove the presumption of vulnerability to victimization for:
 - 1) a child adjudicated as a youthful offender who is violent towards staff or other residents in a detention facility and is transferred to a county jail pending a court hearing; and
 - 2) a child alleged to be a serious youthful offender who is detained in a county jail;
- Require a hearing before a person detained in a juvenile detention facility is transferred to a county jail upon attaining the age of 18, which transfer may be ordered only if the person poses a risk of harm to self or others;
- Impose additional restrictions when a person 18 years of age or older is taken into custody and transported to an adult facility if there is an outstanding juvenile warrant, including:
 - 1) immediate notice by both the arresting agency and the adult facility to the children's court attorney and the juvenile probation office;
 - 2) immediate notice by juvenile probation officer to children's court judge and juvenile defense attorney;
 - 3) a detention hearing within 24 hours (not counting Saturdays, Sundays and legal holidays) if the person is held only on the juvenile warrant and release from detention if criteria for release are met;
 - 4) an adult detention hearing pursuant to regular procedures if the person is held on an adult warrant or charge; and
 - 5) release by a court if all criteria for release are met if time frame for detention

hearing not met for any reason;

- List facilities at which a person between 18 and 19 years old who has violated conditions set by a “problem-solving” or “specialty” court may be detained and set conditions of that detention;
- Require a finding on the record of a “rehabilitative effect” of a 15-day commitment in a certified local detention facility upon a finding of delinquency; and
- Clarify that a child does not receive credit for time served in detention prior to adjudication and disposition.

The effective date of this bill is July 1, 2013.

FISCAL IMPLICATIONS

The Children, Youth and Families Department (CYFD) reports that additional administrative responsibilities would be absorbed using existing resources, but anticipates a minimum additional expenditure of \$75,000 a year on staff, as shown in the table above. The Administrative Office of the Courts (AOC) points to the additional hearings required by several new provisions, which would also increase costs to the judiciary.

Although not directly impacting the State coffers, the Attorney General’s Office (AGO) suggests there may be additional costs to smaller counties and communities which are frequently without separate juvenile facilities and will incur expenses to assure compliance with juvenile facility requirements necessary to provide safety for juveniles from adult offenders and safety for younger juveniles who could be endangered by older, violent juveniles.

SIGNIFICANT ISSUES

The CYFD expresses concern that this bill’s provision allowing adults (age 18 and up) to be placed by specialty courts in a juvenile detention facility may place the state in non-compliance with federal law. (Section 2, amending Section 32A-2-12(H)(1), NMSA 1978.) The federal Deinstitutionalization of Status Offender Act of 1974 requires “sight and sound” separation of adults from juveniles in custody on pre-adjudication status. Non-compliance could result in a subsequent reduction in federal funds to the department.

Second, the CYFD notes this bill would require it expand its certification of facilities which detain juveniles to include adult facilities, and would require adult facilities to have greater oversight and management at intake for individuals under the jurisdiction of children’s courts, including juvenile specialty courts.

The Public Defender Department (PDD) advises the New Mexico Supreme Court is currently considering whether the Delinquency Act as presently written requires convicted juveniles to be given pretrial-confinement credit. The cases are *State v. Nanco*, S.Ct. No. 33,808 and *State v. Gerardo P.* S.Ct. No. 33,862. Regardless of what the Supreme Court decides in those cases, the amendment to Section 32A-2-19 NMSA 1978 in Section 3 would forbid such credit after July 1.

PERFORMANCE IMPLICATIONS

The CYFD reports it has performance measures related to the safety and security of juvenile delinquents which may be negatively affected by this bill. Further, the AOC reports that courts are measured on a performance-based system. Additional hearings required by SB 203 may

affect this performance measure in terms of a court's ability to meet required time limits for those hearings in addition to current dockets.

CONFLICT, DUPLICATION

The AOC has provided this listing of conflicts and duplications between SB 203 and HB 142:

Section 32A-2-4.1(A): HB 142 in the same section retains the word “jail” and includes a child who has violated conditions of release” for a delinquent act to those who can be temporarily held in an adult lockup. This bill adds additional qualifiers on who can arrest or detain a child and adds an additional type of adult custodial setting provided certain protections are in place. There does not appear to be a direct conflict, but both bills should be reviewed together on this section to create one final version of this section.

Section 32A-2-4.1(B): HB 142 in the same section adds “or juveniles who have violated conditions of release” consistent with the addition in subsection A. There is a conflict here between HB142 which retains the one year report requirement regarding facility compliance and the proposed quarterly reporting period. The juvenile public safety advisory board currently reports to the governor and the secretary at least one a year and this would change the frequency of information prior to creating its report. Additionally, SB 203 adds content language to describe the type of information to be collected by the department to the advisory committee. This is a change from current language that state the department shall determine the format of the report, and this creates a conflict between the two versions of this section. SB 203 also requires the report to include information regarding compliance with state requirements. The language added regarding report contents is currently reflected on the juvenile holding log. These two bills should be considered together to determine the final version of this section of the Children's Code.

Section 32A-2-4.1(C): This section conflicts with the HB142 which retains the language that the adult jail or lock-up file the report with the department on compliance. This section delegates that work to a “compliance monitor.” The compliance monitor would be designated by the department and therefore the source of monitoring would change. A determination should be made on which mechanism to use to avoid conflicting provisions. Although a compliance monitor is referred to on the certification sheet on the Department website, it is not currently referred to in this statute.

Section 32A-2-12(A)(4): HB 142 retains the existing language in this subsection. The change in SB 203 adds an exception for using adult county detention centers and municipal jails if department certified or approved by the compliance monitor. This causes a possible conflict.

Section 32A-2-12(C): This section retains language that has been re-written in HB 142. HB 142 removes the qualifier that the youthful offender be violent toward staff or other residents to be transferred to a county jail pending hearing. Additionally, HB 142 includes delinquent children whereas the existing language retained here does not.

Section 32A-2-12(E) [new subsection]: this subsection requires a new hearing take place if transfer to a county jail is requested.

Section 32A-2-12(H)(1) and (2) are similar to HB 142 Section 32A-2-12C(1) and (2).

Subsection (1) adds the time limit of twenty four hours and Subsection (2) is re-arranged, but the language is the same.

Section 32A-2-19(C): This section is addressed similarly in HB 142 at Section 32A-2-18(D).

MD/svb:blm