

Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment to the House Judiciary Committee substitute of the House Regulatory and Public Affairs Committee substitute of House Bill 72 strikes all instances of the words ‘an offense,’ and replaces them with ‘a felony.’ The amendment also strikes all the instances of ‘when’ setting bail or rendering a sentence after conviction and replaces it with ‘for the purpose of’ setting bail or rendering a sentence after conviction.

Synopsis of Original Bill

The House Judiciary Committee substitute of the House Regulatory and Public Affairs Committee substitute of House Bill 72 does not include any appropriations. The bill would amend the Criminal Procedure Act to allow a judge to consider an adult defendant’s juvenile record when setting bail and conditions of release.

The bill also proposes amendments to Section 32A-2-18 NMSA 1978 to expand access to juvenile records by bypassing the requirement that records can only be accessed if the case is a felony. The SPAC amendment reverses this. If a juvenile disposition is considered, the bill maintains it must be confidential and reviewed “in camera,” or excluding the public, to protect the privacy of the defendant. Evidence, documents, or motions pertaining to the use of the juvenile disposition in an adult trial will be sealed.

Finally, the substitute for HB 72 amends Section 32A-2-26 NMSA 1978, Sealing of Records, adding the ability for the court to keep a juvenile record from being sealed to help in determining bail and conditions of release, and for sentencing.

FISCAL IMPLICATIONS

According to AOC, the only costs associated with this amendment of statute would be the minimal costs of updating and distributing the changes, and the prospective for increased appeals and caseloads in the courts. Additionally, there is potential for increased costs to the Public Defender Department in association with any prosecutions, however, PDD stated it is most likely it will be able to absorb any caseload increase.

The New Mexico Corrections Department stated most youthful offenders and serious youthful offenders are not typically sentenced to NMCD facilities, and the department does not currently have youthful offenders any of its facilities. However, enhanced sentences over time will increase the population of New Mexico’s prisons and long-term costs to the general fund. According to NMCD, the average cost per day to house an inmate in a state prison is \$123, or about \$45,250 per year. A longer length of stay would increase that cost. In addition, sentencing enhancements could contribute to overall prison population growth, as increased lengths of stay decrease releases relative to the rate of admissions. The NMCD general fund budget, not including supplemental appropriations, has grown \$5 million, or 7 percent, since FY11 as a result of growing prison population.

Societal benefits, particularly to potential victims, would accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such

as health care expenses, property damage and losses in future earnings and intangible victim costs such as jury awards for pain, suffering and lost quality of life.

SIGNIFICANT ISSUES

According to the AG and AOC in analyses of the original HB 72, the proposed new Section 32A-2-18(B) NMSA 1978 changes the protections granted to juvenile offenders. A juvenile disposition protects youthful offenders from the consequences of adult criminal behavior; however, if juvenile criminal records are available in adult trials, those protections can only prolong adult consequences instead of avoiding them. The substitute bill would only allow the review of juvenile records in private chambers, or “in camera,” and the SPAC amendment would only allow it in felonies, but the use of the record would still alter the original protections. The SJC amendment somewhat addresses this concern, allowing the use of juvenile records only when determining release conditions pending trial, and only in private.

In addition, AOC, AODA, and CYFD discussed potential conflicts in the sealing of juvenile records, typically done when a child turns 18 or when the case is disposed. The substitute bill amends Section 32A-2-26, Sealing of Records, to allow judges to both set aside a sealing order and unseal an already sealed record to determine conditions of release and sentence, and also requires evidence, documents, or motions pertaining to the use of the juvenile disposition in the adult trial to be sealed unless existing laws otherwise state it is not confidential information.

PERFORMANCE IMPLICATIONS

House Bill 72 has the potential to impact two performance measures in courts: cases disposed as a percent of cases filed, and percent change in case filings by case type.

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