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FISCAL IMPACT REPORT

ORIGINAL DATE 2/12/18

SPONSOR Ruiloba/Youngblood LAST UPDATED _____ HB 181

SHORT TITLE Juvenile Justice Subcommittee SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 27, HB 190 and SB 243

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

House Bill 181 creates a new Juvenile Justice Subcommittee (Subcommittee) within the Juvenile Justice Advisory Committee (JJAC), makes changes to the rules and responsibilities of JJAC to require delivery of certain assessment and screening tools and policies to CYFD, and amends funding requirements for continuum boards. HB 181 also amends numerous sections within the Delinquency Act to provide for additional standardized assessment tools developed by the subcommittee to inform detention, diversion, services, case processing, disposition, and treatment. HB 181 also requires the Juvenile Community Corrections programs to account for standardized identification of children adjudicated delinquent who would benefit from that programming.

More specifically:

Section 1: Makes changes to the Juvenile Continuum Grant Fund distribution to require that, beginning July 1, 2020, at least 50 percent of the Fund be used to provide services for juveniles who are placed on probation or supervised release who are considered to be

at moderate or high risk of reoffending based on the results of risk assessments that are performed in accordance with the Delinquency Act. The match required from a local or tribal government receiving a grant is reduced from 40 to 30 percent. Beginning in fiscal year 2022, CYFD may use any balance remaining in the juvenile continuum grant fund at the end of the immediately preceding fiscal year to award grants to a local or tribal government that is not served by a continuum board. The grants shall be made for programs or services for juveniles considered to be at moderate or high risk of reoffending. CYFD shall also adopt, after review by the JJAC, policies for: (1) the review of contractor performance under a contract with a grant recipient; (2) corrective action plans for a continuum, service, program or contractor that receives grant money and that fails to meet the uniform performance measures established in accordance with Section 9-2A-16 NMSA 1978; and (3) determining whether a continuum, service, program or contractor is eligible to receive grant money in the future based on past performance.

Section 2: Creates the subcommittee, which must be established by July 31, 2018 and whose membership may include individuals appointed by CYFD as well as members of the JJAC. By January 1, 2019, the subcommittee must recommend to CYFD a validated risk and needs assessment tool, a validated mental health screening tool and a validated risk screening tool to inform disposition, placement, release, and diversion decisions. Additionally, the subcommittee must develop a plan by which CYFD, by December 15, 2020, collects and annually reports on related performance and outcome measures to the legislature and governor. By January 1, 2020, CYFD must adopt and implement these tools, based on the subcommittee recommendations.

Section 3: Amends the Delinquency Act to define “delinquent child” (10 year of age or older who has committed a delinquent act), “diversion”, “mental health screening”, “risk assessment”, “risk screening”, “status offense” and “technical violation”.

Section 4 and 7: Amends the duties of Juvenile Probation Services (JPS) to require them to conduct a risk assessment for each youth charged in a delinquency complaint and on whom a petition is filed, as well as a mental health screening for each youth who is adjudicated delinquent. Prior to disposition, JPS shall provide the results risk assessment and the mental health screening to assist all parties and the court in determining an appropriate disposition of the child’s case, including diversion. It also requires that probation services and juvenile correctional facilities conduct a new risk assessment every six months or when significant changes occur and, for those children placed on probation following adjudication, a new mental health screening as well. Prior to disposition, JPS will be required to provide the results from the risk assessment and the mental health screening to assist all parties including the court in determining an appropriate disposition of the child’s case, including diversion.

Section 6: Prohibits a child from being placed in detention solely based on a technical violation of probation unless a written determination is made by the court that the violation is based on the child (1) absconding from supervision; (2) having been referred to a specialty court; (3) posing a substantial risk of harm to the child's self; (4) posing a substantial risk of harm to others; or (5) demonstrating the child may leave the jurisdiction of the court. Additionally, placement in detention may occur if no alternatives to detention are available or appropriate.

Section 8: Requires a court include in its dispositional judgment findings on the results of assessments and screenings required in Section 7. If a child is committed to the custody of a facility for the care and rehabilitation of delinquent children, the court must find that an appropriate alternative service or program in the community does not exist or was previously used by the child without success and that the child poses a risk to the community based on the child's risk assessment, the seriousness of the act committed by the child, and the child's history of delinquency and any other relevant factors.

Section 9 and 10: Requires, in determining whether to release a child from probation, supervision or commitment or whether to extend a commitment, due consideration must be given to a child's risk of reoffending, as determined by a risk assessment, the seriousness of the act for which the child was adjudicated delinquent, and the child's progress in meeting treatment goals.

Section 11: Amends the Juvenile Community Corrections Grant Fund to provide community corrections programs and services for the diversion of children adjudicated delinquent and who are identified as being at moderate- or high-risk of reoffending based on a risk assessment pursuant to the Delinquency Act to community-based settings. It also clarifies that CYFD is prohibited from contracting services with a private organization that is not a nonprofit organization without the approval of the department secretary.

The effective date of this bill is July 1, 2018.

FISCAL IMPLICATIONS

CYFD anticipates no fiscal impact to the State. However, LFC staff anticipates that at least some level of training will be required on the new risk assessment and mental health screening tools, which likely will result in increased costs for CYFD. Further, as AOC notes, new language in Subsection 17(C) mandates “the department conduct a mental health screening and a subsequent full mental health and substance use assessment if warranted” prior to each disposition. This particular mandate makes no provision for financial feasibility, as is made for pre-adjudicatory screenings in Subsection 17(D). Conducting full mental health assessments and, when required, substance use assessments as mandated by Subsection 17(C) may also increase costs for CYFD.

AOC reports any additional fiscal impact to the judiciary would be proportional to the number of delinquency cases filed and their disposition. It notes that HB 181 provides a more standardized process for assessing risk and needs and diverting children from the delinquency system; the assumption is less delinquency cases filed overall in the court system, equating to cost savings. AOC provides this comment from the Office of Juvenile Justice and Delinquency Prevention about diversion and cost savings: “Diversion programs have also been implemented as a strategy to reduce the costs of formal court proceedings by diminishing the burden on the juvenile court system and detention facilities. Diversion leads to a decrease in the caseloads of prosecutors, judges, and juvenile probation officers. In addition, diversion leads to a decrease in the number of youths sent to detention facilities.” Development Services Group, Inc. 2017. “Diversion Programs.” Literature review. Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention. https://www.ojjdp.gov/mpg/litreviews/Diversion_Programs.pdf

SIGNIFICANT ISSUES

AOC reports that HB 181 is the product of the Statewide Juvenile Justice Taskforce, which convened in early 2017. The Council of State Governments assisted in facilitating meetings with stakeholders across the state to identify and address gaps in New Mexico’s juvenile justice system.

AOC provides analysis on these different provisions in HB 181:

- Juvenile Continuum Grant Funding. Currently, 11 counties are without juvenile justice continuum boards and thus unable to access the continuum grant funds. Generally, continuum boards will contract with local programs or entities to administer programming. HB 181 would allow programs in these jurisdictions to tap into continuum grant funds, provide services for juveniles, and remain accountable to CYFD. This may be particularly beneficial to rural communities. Further, HB 181 requires 50 percent of the continuum grant funds to serve youth who have been adjudicated as delinquent and are assessed as moderate to high risk, a population identified by the taskforce as being underserved. Additionally, the match requirement reduction would reduce the financial burden on local and tribal governments operating relevant programming or services. HB 181 also requires continuums and programming to provide performance and outcome measures. This would ensure the grant awards are evidence-based and accountable to CYFD and the legislature.

Delinquency Act Definition Changes. Adding a minimum age for a child to be a delinquent child follows the national trend. Twenty other states have a required minimum age and a majority of those states set the age at 10 years old. For a full examination, see The National Juvenile Defender Center, *A Minimum Age For Delinquency Adjudication – a Multi-Jurisdiction Survey* 2016. <http://njdc.info/practice-policy-resources/state-profiles/multi-jurisdiction-data/minimum-age-for-delinquency-adjudication-multi-jurisdiction-survey/> This clarification will eliminate those cases where a very young child technically commits a delinquent act, such as a six year old hitting a parent and being charged with battery on a household member.

“Status Offense” is defined as any other offense that is not delinquent or a technical violation. This likely refers to truancy, curfew, or runaway. However, the definition used by the Office for Juvenile Justice and Delinquency Prevention (OJJDP) defines status offense as “acts that are illegal only because the person committing them is of juvenile status.” See *OJJDP Statistical Briefing Book*. Online. Available: <http://www.ojjdp.gov/ojstatbb/court/qa06601.asp?qaDate=2014>. Released on December 06, 2017.

Risk Assessments, Mental Health Screenings and Other Changes in Delinquency Act. HB 181 makes a number of changes to the Delinquency Act that involve incorporating the risk and mental health assessment tools recommended by the Subcommittee, as approved and implemented by CYFD.

Risk assessments are standardized tools to help practitioners collect information on a youth's likelihood to reoffend and identify other factors in an effort to reduce that risk, as well as identifying appropriate services or treatment. Currently, CYFD utilizes a standardized risk assessment instrument (RAI) when determining if a juvenile, who is the subject of a delinquent offense, should be placed into detention. NMSA 1978 §32A-2-11(C). The use of standardized tools to assess risk or mental health needs in theory should promote objective decision-making at all levels of the process, reduce unnecessary formal petitions, and tailor services and programs to youth without judgment. See OJJPD Literature Review a Product of the Model Programs Guide: Risk and Needs Assessments for Youth, 2015 <https://www.ojjdp.gov/mpg/litreviews/RiskandNeeds.pdf> These assessments will in theory, provide more objective decision making which can reduce unnecessary detention, formal petitions, racial and ethnic disparities, and increase likelihood that a child will receive the most appropriate services or treatment.

HB 181 also focuses on providing more community-based services to those children who are moderate to high risk and have been adjudicated delinquent. Generally, these children are considered less desirable for programs to work with but are those with the greatest need.

Section 6 addresses the criteria for detention. Currently, JPS may place a child in detention for any violation of the terms or conditions of the child's probation. As soon as a child is placed in detention, a detention hearing is required. With fewer children placed in detention for unnecessary reasons, the courts should see a proportionate reduction in the number of detention hearings.

CYFD comments that currently, local juvenile justice continuums and their subcontractors may be allocating the resources granted to them in a manner that is inefficient. It also believes that as the amount of available resources for the continuums is finite and dwindling, this bill could help to concentrate resources on the highest-risk and greatest-needs children and provide a uniform mechanism by which risks may be identified and categorized. According to CYFD, the tools called for in this bill will better match services to needs, and provide juvenile probation officers with a more concrete and uniform foundation for their recommendations, resulting in outcomes that are more consistent statewide for juvenile offenders.

PERFORMANCE IMPLICATIONS

CYFD reports this bill has the potential to reduce formal supervision (probation) caseloads, and possibly the population of youth committed to secure facilities. CYFD has performance measures related to both. AOC reports this may impact the district courts' measures as to cases disposed of as a percent of cases filed and the percentage change in case filings by case type.

RELATIONSHIP

Relates to HB 190 and SB 243, duplicate bills providing for dual sentencing of youthful offenders. Also related to HB 27, removing "parole" from the Delinquency Act.

TECHNICAL ISSUES

On page 29, line 18, the term “case” is used when referring to a post-disposition risk assessment and mental health screening. AOC notes that at this stage, a case is in fact closed, so a phrase such as “a significant change in circumstances or at the discretion of the facility or JPS” may be more appropriate.

AOC also points out that Subsection 6(H) requires a court to use the predisposition report, “including the results of the assessments and screening...” while subsection 6(I) only refers to the report. Making the two subsections consistent may be more in keeping with the intent of HB 181.

MD/al