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FISCAL IMPACT REPORT

LAST UPDATED _____
ORIGINAL DATE 03/06/2023

SPONSOR Pope

BILL

SHORT TITLE Military Base Child Concurrent Jurisdiction **NUMBER** Senate Bill 406

ANALYST Hanika-Ortiz

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Courts	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund
PDD	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund
AODA	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal		Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Responses Received From

New Mexico Attorney General (NMAG)
 New Mexico Administrative Office of the District Attorneys (AODA)
 Public Defender Department (PDD)
 Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of Senate Bill 406

Senate Bill 406 (SB406) amends Section 19-2-2 NMSA 1978 to establish concurrent jurisdiction between a military installation and the state relating to violations of law by a child under the age of 18 that occurred within the boundaries of a military installation. SB406 also adds a new subsection to Section 32A-1-8 NMSA 1978 of the Children’s Code to establish concurrent jurisdiction between a military installation and the court over any case involving a violation of law by a child under the age of 18 that occurred within the boundaries of a military installation.

SB406 also makes clear that establishing concurrent jurisdiction for this purpose “...shall not be considered a relinquishment or transfer of any other jurisdiction.”

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023,

(90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

AODA said SB406 will likely add new cases but neither AODA nor the PDD came up with a fiscal impact. AOC noted any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, appeals from convictions, and an increase in court and parole hearings. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, requiring additional resources to handle the increase.

However, PDD explained there are likely few prosecutions of this nature, so they would likely be able to absorb some cases under the proposed law. Nevertheless, PDD noted it was already operating beyond workload capacity, so any increase in the number of prosecutions brought about by the cumulative effect of all other proposed criminal legislation, would bring a concomitant need for an increase in indigent defense funding to maintain compliance with constitutional mandates.

SIGNIFICANT ISSUES

This bill addresses concurrent jurisdiction between the state and a military installation for crimes committed within its boundaries, and where a child committed the alleged violation of the law.

AOC explains:

The amendments to Section 19-2-2 establish that the United States must first request the state to establish concurrent jurisdiction over military property when a child has committed a violation of law on said property. In turn, SB406 via the Children’s Code Section 32A-1-8(E) gives the state court jurisdiction over any *case* that involves a “violation of law allegedly committed by a child within the boundaries of a military installation.”

PERFORMANCE IMPLICATIONS

Discussing jurisdictional issues further, NMAG explained:

It appears that a state’s family or juvenile court system holds original, exclusive jurisdiction over offenses committed by minors on federal property, unless otherwise provided under state or federal law. *See State In Int. of D.B.S.*, 137 N.J. Super. 371, 374, 349 A.2d 105 (App. Div. 1975) (finding state Court had jurisdiction over acts of delinquency committed on military bases); see also *United States v. Juv. Male*, 939 F.2d 321, 323 (6th Cir. 1991) ([t]he juvenile jurisdiction of district court shall be exclusive in all cases relating to minors *in which jurisdiction is not vested by law in some other court*.

Under federal statute, juvenile delinquency shall not be proceeded against in any court of the US unless the Attorney General, after investigation, certifies . . . that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile . . . (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony described in . . . the Controlled Substances Act . . . or . . . the Controlled Substances Import and Export Act, . . . and that there is Federal interest in the

case or offense to warrant the exercise of Federal jurisdiction. 18 U.S.C.A. § 5032 (1996).

Therefore, NMAG concludes, the proposed amendment to Section 19-2-2 is consistent with case law in other jurisdictions and with federal statute. It appears that generally, the federal government will only intercede in delinquency cases where no other court has jurisdiction. As this bill makes clear that that the State has jurisdiction for juvenile offenses committed on military installations, there might be few requests for concurrent jurisdiction.

TECHNICAL ISSUES

AOC said SB406 does not provide a mechanism for how records are shared between military and state entities, such as a MOU, nor does it clarify what is considered a violation of law by a child.

SB406 references the definitions section of the Children’s Code but does not mention the Delinquency Act (Chapter 32A, Article 2) which govern children who commit a violation of law.

OTHER SUBSTANTIVE ISSUES

Some of the resources AOC shared:

- (1) On September 9, 2020, the U.S. Department of Defense Office of Inspector General released, *Evaluation of the Department of Defense and Department of Defense Education Activity Responses to Incidents of Serious Juvenile-on-Juvenile Misconduct on Military Installations*, to respond to incidents of serious juvenile on juvenile misconduct.
- (2) In 2020, the Military Installation Non-adult Offender Reform Act provided that the U.S. Secretary of Defense enter into a memorandum of understanding (MOU) with the head prosecuting authority of each state. This MOU would provide that a minor who commits a crime on a military installation may be referred to adjudication in the state if it consents.
- (3) In 2019, the International Association of Chiefs of Police released “Addressing the Gap in U.S. Juvenile Justice on Military Installations,” which encourages communities to pursue concurrent jurisdiction for juveniles on military installations.

OTHER SUBSTANTIVE ISSUES

PDD explains that without concurrent state jurisdiction, juvenile misconduct on military bases is adjudicated in the federal court system, which lacks appropriate juvenile-focused resources.

POSSIBLE QUESTIONS

AOC asks:

If a child is placed on juvenile probation in New Mexico but moves to another state, the juvenile’s probation can be transferred to receiving state via the Interstate Compact for Juveniles. For children on probation who live on military installations and are transferred, what entity will have authority to monitor the child’s probation, especially when the

receiving state does not have concurrent juvenile jurisdiction or a MOU with the military?

AHO/rl/ne/mg