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## FISCAL IMPACT REPORT

ORIGINAL DATE 3/5/19

SPONSOR O'Neill/Ruiloba LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Create Juvenile Parole Board SB 403

ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Children, Youth and Families Department (CYFD)  
 Administrative Office of the Courts (AOC)  
 Law Offices of the Public Defender (LOPD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 403 enacts the Juvenile Parole Act which enables, organizes and grants powers and duties to a newly created juvenile parole board. This bill also replaces references to supervised release with parole in existing law.

The juvenile parole board is composed of three members appointed by the governor, and is administratively attached to CYFD. The board members serve six year terms. The governor designates the chair of the board, and appoints a director to serve as the administrative officer for the board, who may hire classified staff as necessary. The Act sets procedures for removal of board members by the governor and how vacancies on the board are to be filled. Board members must be trained or educated in such fields as criminology, education, psychology, psychiatry, law, social work or sociology. No current officials or employees of federal, state or local governments may serve as juvenile parole board members.

The board's powers and duties include:

- (1) Granting, denying or revoking parole for children;
- (2) Conducting investigations and hearings to effectuate the board's duties;
- (3) Serving as ombudsman to receive complaints concerning department personnel entrusted with detention, care or rehabilitation of children;
- (4) Submitting a bi-monthly report to the governor on the state of facilities for detention of children; and
- (5) Adopting written policies specifying the criteria the board is to consider when deciding to grant, deny or revoke a child's parole.

The board must notify the committing court of its intent to parole at least 30 days before ordering parole to seek commentary from the committing judge, although the final decision to grant parole is exclusively within the board's control. The board then must file a copy of its decision with the committing court or to the appropriate court in the event of a transfer of venue. Prior to ordering parole, the board must interview the child and furnish the child with a written statement of parole conditions, which shall be acknowledged by the child and the child's parent or guardian. Finally, the board must provide the reason for denying parole to the child as well as the parent or guardian within 48 hours of the board's decision.

A child is eligible for parole 40 days after the entry of a judgment transferring legal custody to CYFD, unless CYFD recommends earlier appearance before the board. If parole is denied, the child shall be eligible for review 60 days after the date of denial. If CYFD recommends but the board denies parole, CYFD shall transfer the child's records to the appropriate district court for review within 10 days after denial. After reviewing the records but without a formal hearing on the matter, the court shall either affirm the board's denial or grant parole. In the event of affirmance, the child is eligible for review 60 days after the court's decision. The board may review any case upon its own motion at any time after parole is denied.

The effective date of this bill is July 1, 2019.

## **FISCAL IMPLICATIONS**

CYFD notes that the Act requires a director be hired, who in turn may employ other staff as necessary, and also allows mileage and per diem for board members, but there is no appropriation or other funding provided to the department for these costs. AOC notes that additional court hearings or proceedings (e.g. review of denial of parole when recommended by CYFD) may be required, increasing caseloads and necessitating additional resources. Because it is unclear whether a child, who is afforded greater protections than an adult defendant in certain respects, would have the right to counsel at a parole hearing, LOPD is unable to predict the impact of this bill on its operating budget.

## SIGNIFICANT ISSUES

As background, CYFD notes that for over a decade, its Division of Juvenile Justice Services (JJS) has been involved in a progression of reform efforts that have helped the juvenile justice system mature from a correctional/punitive system to a rehabilitative one. As part of that effort, in 2009, consistent with best practices that juveniles should be treated differently than adults, the then existing statute providing for a juvenile parole board was repealed. See Laws 2008, Chp. 239, Section 70. It was replaced with Juvenile Public Safety Advisory Board (JPSAB), which currently advises CYFD on release decisions and the criteria for them. These changes were recommended by the Children’s Code Task Force, composed of CYFD staff, child advocates, social workers, behavioral health workers, law enforcement officers, prosecutors, defense attorneys, judges, county officials and others. CYFD goes on to explain the ramifications of reimposing a juvenile parole board and the concept of juvenile parole:

This bill will have a major effect on how committed youth in New Mexico are discharged from CYFD facilities and, the way it is currently written, might undermine existing best practices that have made some of CYFD’s juvenile justice programs national models. This bill would unnecessarily stigmatize youth who are under juvenile justice jurisdiction – undermining best practice reforms of the last decade. One example is the use of the term “parole”, which statutorily or colloquially applies to adult inmates released from a correctional institution. Characterizing adjudicated juvenile delinquents as parolees adds the stigma of adult criminal consequences to the terms of a commitment on a juvenile delinquency matter, not a criminal one.

This bill removes all references to supervised release within current statutes and replaces it with the word parole. The term “parole” is not defined in this bill. New Mexico statute defines parole as “the release to the community of an inmate of an institution by decision of the board or by operation of law subject to conditions imposed by the board and to its supervision”. For years, New Mexico has moved from incarceration towards rehabilitation and has had substantial positive outcomes for our youth. The term “parole” and “inmates” is associated with adult corrections and would be in conflict with many other terms used throughout juvenile justice that reflect our rehabilitative focus such as youth care specialists and community support officers instead of the more adult terminology of “correctional officers” and “surveillance officers.” To return the term parole to the Children’s Code seems to contradict not only the rehabilitative efforts that CYFD has made but national best practices.

Additionally, CYFD calls attention to these issues:

The primary gap in how this new system will function is the process by which the parole board will be apprised of eligible clients. Since the bill only calls for the parole board to establish the standards by which children will be considered for parole, it leaves the question of whether a multi-disciplinary team approach will continue to be employed. This bill could vest an inordinate amount of authority in the NM Juvenile Parole Board Director in selecting eligible youth for parole consideration, thereby negating the benefit of facility program expertise in selecting eligible youth for parole.

And:

This bill may lead to youth inappropriately being confined for longer time periods by causing administrative barriers in processing. The timelines under this bill could frustrate the purpose of a short-term commitment, as the existing 90-day release period survives despite the changes. If the case returns to the court upon disagreement between the board and CYFD as outlined in Section 8, this bill sets forth no time limit for the court to either affirm the parole denial or to grant parole over the board's decision. This vague timeline could accidentally penalize a child who would have been eligible for earlier release but for these new vague timelines.

According to CYFD, the Act also may result in prematurely early release hearings. CYFD notes that 74 percent of all commitments to a juvenile facility are for a period of one year. It advises that to allow for all of the processes required in this bill for a child on a one year commitment, the parole board would need to hold release hearings well in advance of the mandatory release period of 90 days, putting the parole board in the position of making release decisions before programming and therapy may have the complete desired results.

Finally, as to the board's role as ombudsman regarding complaints concerning department personnel or facilities that detain, care for or rehabilitate children under the Children's Code, CYFD notes that through the reform efforts over the past decade, it has developed and implemented a robust system to investigate complaints or concerns which includes the Office of Inspector General, Grievance Unit, Employee Relations Bureau, Stand Alone Procedure 03, and the Office of Quality Assurance. Additionally, although CYFD certifies that county detention centers are in compliance with the New Mexico Detention Standards, it reports it has no authority over county personnel. Further, AOC notes that this ombudsman authority does not address whether the board is to investigate or make recommendations about complaints it receives.

## **PERFORMANCE IMPLICATIONS**

CYFD advises that it currently reports to the Legislature the percentage of clients that successfully complete supervised release. This bill vests all releasing authority with the board, as well as the determination of the conditions of parole. CYFD expresses concern that under this bill, it will be responsible for the outcomes related to clients on parole even though it has no authority to establish those conditions to ensure the greatest success.

AOC reports the courts are participating in performance-based budgeting. 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
- Percentage change in case filings by case type

## **TECHNICAL ISSUES**

AOC calls attention to a conflict between the Act and existing law. Under the Act, the Board can revoke parole. See Section 6(A)(1). Yet Section 32A-2-25 of the Delinquency Act which this bill does not amend, requires that there be a revocation proceeding either before CYFD or a hearing officer contracted by CYFD.

## AMENDMENTS

AOC notes that there are several references to "facilities entrusted with the detention, care or rehabilitation of children pursuant to the Children's Code." That phrase could be read broadly to include shelter facilities or mental health treatment facilities providing care to children who are not in the delinquency system, which may not be the intent of the bill. Amending that language to read "pursuant to the Delinquency Act" may better reflect that intent.

AOC also recommends the bill be amended to contain basic criteria which the board must consider when making parole determinations. See, e.g. NMAC 8.14.7.9(C) and (D).

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