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## FISCAL IMPACT REPORT

SPONSOR Ruiloba ORIGINAL DATE 2/18/15  
LAST UPDATED \_\_\_\_\_ HB 433  
SHORT TITLE Escape from CYFD Penalties SB \_\_\_\_\_  
ANALYST A. Sánchez

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

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	See Narrative					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
Administrative Office of the District Attorneys (AODA)  
Administrative Office of the Courts (AOC)  
Children, Youth and Families Department (CYFD)  
New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

House Bill 433 would amend NMSA 1978, Section 30-22-11.1 making escape from a juvenile justice facility a fourth degree felony, effective July 1, 2015.

### FISCAL IMPLICATIONS

PDD reports that the cumulative effect of this and all other proposed criminal legislation would bring a concomitant need for an increase in indigent defense funding to maintain compliance with PDD's constitutional mandates.

AOC opines that as penalties and consequences become more severe, delinquent children and youthful offenders may demand jury trials. More jury trials will require additional judge time, courtroom staff time, courtroom availability and jury fees. These additional costs are not capable of quantification.

The cost to incarcerate a youthful offender is \$420 per day. An offender under 18 years of age

could be required by a Children’s Court judge to serve an additional one to two years after the completion of the original sentence. The annual cost for CYFD under this bill is between \$153.3 thousand and \$306.6 thousand after the completion of the original sentence.

If the individual is over 18 years of age, the time sentenced for escape would be served at the Corrections Department. Since this would be a new commitment the annual cost to the department would be \$40.2 thousand.

## **SIGNIFICANT ISSUES**

CYFD reports that from a practical standpoint, under the Delinquency Code, a delinquent child faces the same penalties, regardless of the level of the crime. Whether the crime is listed as a misdemeanor or a fourth degree felony, if the child is adjudicated for that crime, he or she faces penalties ranging from a time waiver to a two-year commitment to a CYFD secure facility. The exception to this: if the child is charged as an adult (youthful offender or serious youthful offender), the adult sentencing scheme applies, and the penalties for each charge are added up as the range of penalties the defendant could receive.

CYFD opines that if delinquent children recognize that this is a greater penalty, and that therefore the law is treating it as a more serious offense, this may serve as a deterrent to children escaping or attempting to escape from custody. Additionally, it will make it easier for law enforcement to obtain warrants, as it is generally difficult for law enforcement to obtain a warrant in response to a misdemeanor crime.

According to PDD, the bill would have an interesting effect. Naturally, juveniles charged as delinquents under this bill’s proposed changes would not be affected by the increase in criminal penalty, *see* NMSA 1978, Section 32A-2-18, however those in CYFD custody who are between the ages of 18 and 21 would be subjected to serious adult felony charges stemming from their initial delinquency placements. So two shoplifting teens 16 and 17 who were declared delinquent and remanded to the custody of CYFD after shoplifting beer in the same incident would be treated very differently if they then left the CYFD facility together a year later: the now-17-year-old would receive delinquency adjudication, and the now-18-year-old would be a felon. This disparity of consequential effect by felonizing delinquent escapees who happen to have turned 18 might seem to be at odds with the Delinquency Act’s announced purpose of removing children from the adult consequences of criminal behavior while holding them accountable and reintegrating these children (most with challenging backgrounds) into the community. *See* NMSA 1978, Section 32A-2-2.

The AODA points out similar issues as does the PDD. A felony conviction carries more serious consequences. If the person escaping custody is 14-18, a felony conviction with three prior felonies means the child will be treated as a “juvenile offender” rather than a delinquent. See 32A-2-3 (J)(2) NMSA 1978. If the person escaping custody is 18 or over, a felony conviction carries adult consequences, and it may affect that person’s ability to obtain employment, and to obtain certain licenses, permits and government benefits, etc.

The AOC reports that the children’s court has exclusive original jurisdiction of all proceedings in which a child is alleged to be a “delinquent child.” (Section 32A-1-8(A)(1)) A “child” is a person who is less than eighteen years old. (Section 32A-1-4(B)) A “delinquent child” is a child who has committed a delinquent act. (Section 32A-2-3(B)) While some states have established a

minimum age for prosecution, New Mexico has no minimum age requirement for trying a child as a delinquent child. A “delinquent act” is an act committed by a child that would be designated as a crime under the law if committed by an adult. (Section 32A-2-3(A)) Section 32A-2-3(A)(5) includes escape from the custody of a law enforcement officer or a juvenile probation or parole officer or from any placement made by the department by a child who has been adjudicated a delinquent child.

AOC also adds that the Children’s Code requires that if a complaint alleges a felony or if the child has had three or more prior misdemeanors within two years of the instant offense, probation services must inform the Children’s Court Attorney (“CCA”) of the complaint and recommend a disposition. Otherwise, probation services may dispose of the complaint informally. (Section 32A-2-7(E) and (F)) Even if a Juvenile Probation Officer (“JPO”) refers a case to the CCA’s office, the JPO may recommend against filing a formal petition. However, the CCA has the final say as to whether or not to file a petition. (Section 32A-2-8.) Once a petition is filed, procedures must be followed within specified time periods under both the Children’s Code and Children’s Court rules, 10-101 NMRA, including the filing of a petition, by the CCA, within 2 working days of the date of detention of a child. (Rule 10-211(C)) If a petition is filed, a child may demand a jury trial when the offense alleged would be triable by jury if committed by an adult. (Section 32A-2-16)

## **PERFORMANCE IMPLICATIONS**

While CYFD does have performance measures related to clients successfully completing programming, this bill will not affect those performance measures.

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
- Percent change in case filings by case type

## **OTHER SUBSTANTIVE ISSUES**

Under the changes proposed in this bill district attorneys will no longer have to prove assault or battery in the course of an escape in order to obtain a fourth degree felony conviction

Of interesting note is that in the Criminal Code, escape from jail is a fourth degree felony for adults, *see* §30-22-8. Escape from the penitentiary is a second degree felony, *see* §30-22-9.

According to NMSC, three states (Michigan, Virginia, and Maryland) provide a felony penalty for the offense of escape from a juvenile justice facility.

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