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## FISCAL IMPACT REPORT

**SPONSOR** Rehm **ORIGINAL DATE** 1/22/16  
**LAST UPDATED** 2/14/16 **HB** 42/aHJC/aSPAC  
**SHORT TITLE** Delinquency Act Terms & Absconders **SB** \_\_\_\_\_  
**ANALYST** Klundt

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

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		Indeterminate but possible increased costs	Indeterminate but possible increased costs		Recurring	General

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Attorney General’s Office (AGO)  
 Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amended language to include the following:

“D. The issuance of a warrant upon an allegation that the child has absconded from supervised release shall toll the supervised release period. After a hearing upon return, if the court finds the child absconded from supervised release, the time from the date of the violation to the date of the child's arrest shall not be counted as time served on supervised release.”

#### Synopsis of HJC Amendment

The House Judiciary Committee (HJC) amendment to HB 42 adds language requiring any extension of commitment under Section 32A-2-25 NMSA 1978 to follow the procedure prescribed in Section 32A-2-23 NMSA 1978.

Synopsis of Original Bill

HB 42 amends the Delinquency Act of the Children’s Code, to update terminology and establish new deterrents against abscondence. The terms “parole” and “parole board” are replaced with “supervised release” and “public safety advisory board”, respectively. In order to return a child to New Mexico who has absconded from supervised release, a district court would issue a warrant, as opposed to the department issuing a retake warrant, which is authorized in the current statute. Upon issuance of a warrant, the supervised release period would be tolled. Further, this bill would allow a children’s court attorney to file a petition alleging that a child has willfully absconded from supervised release. If the court finds willfulness and that it is necessary to safeguard the child’s welfare or the public’s safety, the court may extend the child’s commitment to a maximum of six months for a short-term commitment and one year for a long-term commitment, or until the child reaches the age of twenty-one.

**FISCAL IMPLICATIONS**

There is no appropriation included in HB 42, however CYFD reports any fiscal implication for the agency as the result extending the commitment for a child found to have willfully absconded from supervised release would be absorbed by existing resources. As of October 2015, the secure juvenile justice facilities population census reported 75 percent state-wide capacity.

The AOC reports any fiscal impact on the judiciary would be proportional to the enforcement of this law and petitions filed alleging a child has willfully absconded, warrants issued, and hearings associated with the same. In general, new laws, amendments to existing laws, new hearings have the potential to increase caseloads or require additional court processes, thus requiring additional resources to handle the increase.

PDD reports there are likely very few prosecutions for these offenses, so little impact is envisioned. While it is likely that the PDD would be able to absorb some cases under the proposed law, any increase in the number of prosecutions brought about by 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 constitutional mandates.

**SIGNIFICANT ISSUES**

The AOC reports the amendment to HB 42 does address due process concerns raised previously. By requiring the use of procedures outlined in Section 32A-2-23 NMSA 1978, a youth will be afforded an opportunity for notice and hearing before an extension of commitment. Subsection (H) outlines an exception to Subsection (A) allowing a young person to motion the court to modify a disposition. Additionally the agency notes 8.14.2.7 NMAC, Subsection BB, explains that “retake warrant refers to the document issued by youth and family services directed to law enforcement and department staff, to detain a client alleged to have violated conditions of supervised release and return the client to a detention facility.” However, Section 32A-2-23(I) states that “the Department may seek a bench warrant from the court when the child absconds from supervised release.”

HB 42 updates the Delinquency Code to align concepts and terms with current juvenile justice system and adds language regarding youth who abscond from supervised release. CYFD reports the agency has struggled with the lack of remedies for youth who abscond from supervised

release. Currently, CYFD must discharge a youth on the term expiration date despite the recording of an active warrant if the youth is not served with a warrant prior to the expiration date. The agency reports there exists no statutory or procedural prohibition that would urge or compel a child not to abscond.

Supervised release is an important tool in the aftercare services that CYFD provides juvenile justice involved young people. Supervised release helps to protect public safety and promote successful transition and reintegration of the juvenile the community. 8.14.7.7 NMAC, Subsection AA explains, “a juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release.”

When a child absconds while on supervised release and is subsequently discharged per the current statutory time frames, CYFD believes the safety of the youth and the public may be at risk. The agency states the youth may not have completed required programming and rehabilitation opportunities and may be at higher risk for recidivism. Additionally, many post-commitment programs (including residential placements) involve the treatment of serious issues, e.g., substance abuse, mental illness, sex offender treatment.

CYFD believes this bill addresses risk from youth absconding in two ways. First, it allows time to toll the period of supervised release from the time the warrant is entered into NCIC until such time the warrant is served. Essentially, this shall “return” the lost absconder time to the youth. For example, a child who absconds on the first day of a 90 day release period will still have 89 days to serve upon returning to custody. However, the AOC notes there is no mechanism in place to quash the warrant after the person is no longer under the jurisdiction of the children’s court. It is unclear what would happen if a 28 year-old is detained on a warrant issued under HB 42.

During an adjudicated juvenile offender’s term of commitment, CYFD has exclusive jurisdiction and authority to grant or deny release and impose conditions of supervised release. 8.14.7.14 NMAC details the procedural due process rights that are afforded to a juvenile in supervised release revocation hearings. HB 42 adds Subsection (E) extending a child’s term of commitment, likely requiring additional procedural due process safeguards.

The New Mexico Supreme Court explains, “[b]ecause children are particularly susceptible to overreaching tactics, especially by those in a position of authority, the legislature has provided juveniles with augmented procedural protections.” *State v. Javier M.*, 2001-NMSC-030, 33 P.3d 1. Probation revocations like the extension of commitment in Subsection (E) in HB 42 may result in a loss of liberty. The Children's Code and the Children's Rules both mandate that juveniles be afforded the same rights and procedures in revocation proceedings that they are afforded in delinquency proceedings.

This approach to probation revocation hearings is reflected in the Children's Code and Children's Court rules. For instance, Section 32A–2–24(B) provides that “proceedings to revoke probation shall be governed by the procedures, rights and duties applicable to proceedings on a delinquency petition.” Similarly, Rule 10–261(C) NMRA provides that “[p]roceedings to revoke probation shall be conducted in the same manner as proceedings on petitions alleging delinquency. The child whose probation is sought to be revoked shall be entitled to all rights that a child alleged to be delinquent is entitled to under law and these rules[.]” *State v. Trevor M.*, 2015-NMCA-090, 341 P.3d 25 (2014).

AOC states HB 42 does not provide any of the procedural due process safeguards that will likely be required to revoke a child’s supervised release and increase the term of commitment.

The CYFD also states this bill provides the agency with more options to treat youth upon warrant return and hearing, e.g., re-placement, and reassessment of needs. Second, the bill allows for a petition to be filed if the youth is on supervised release status and absconds. The agency states this change would provide a process by which the commitment time for high-risk youth can be extended.

## **TECHNICAL ISSUES**

AOC reports 8.14.2.7 NMAC, Subsection BB, explains that “retake warrant refers to the document issued by youth and family services directed to law enforcement and department staff, to detain a client alleged to have violated conditions of supervised release and return the client to a detention facility.” However, Section 32A-2-23(I) states that “the Department may seek a bench warrant from the court when the child absconds from supervised release.” The warrant terms in HB 42 are not clear, and might cause confusion.

AGO notes HB 42 would create a new procedural distinction between children absconding within the state and outside of the state, the former requiring only a retake warrant issued by the department and the latter requiring a district court warrant in order to return the child. This new distinction between warrants lends ambiguity to proposed Subsection D, which states that a “warrant” shall trigger tolling of the supervised release period. It is unclear whether this subsection contemplates a district court warrant or a department retake warrant.

KK/al/jle