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FISCAL IMPACT REPORT

SPONSOR Sharer ORIGINAL DATE _____ LAST UPDATED _____ HB _____

SHORT TITLE Conviction in Certain Courts as “Adults” SB 275

ANALYST Sánchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total			See Increase in Fiscal Impact Section	See Increase in Fiscal Impact Section	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates SB 257 and HB 296

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Administrative Office of the Courts (AOC)
- Administrative Office of the District Attorneys (AODA)
- Attorney General’s Office (AGO)
- Public Defender Department (PDD)
- Adult Parole Board (APB)

SUMMARY

Synopsis of Bill

Senate Bill 275 proposes to amend Section 31-21-5 NMSA 1978 (Probation and Parole Act) to change “field services” to “probation and parole” to describe the division director, which aligns it with the New Mexico Corrections Department divisions set out in Section 9-3-3 NMSA 1978. More importantly, the bill expands the definition of “adult” to mean “any person convicted of a crime by a district, magistrate or metropolitan court”. The law currently restricts the conviction of adults to district court.

FISCAL IMPLICATIONS

PDD states that it appears that this bill could have a significant impact on the Adult Probation and Parole Division and the affected courts of limited jurisdiction. In addition, it would expand the duties of the Director under Section 31-21-7(A) to supervise such probationers, and would require an expansion by the adult probation and parole division of intensive supervision programs under Section 31-21-13.1 to serve these courts of limited jurisdiction.

The following are the average cost of supervision by NMCD adult probation and parole depending on the type of supervision an offender is placed.

- Standard supervision program: \$2,766 per year,
- Intensive supervision program: \$2,174 per year,
- Community corrections: \$4,236 per year,
- Female residential community corrections programs: \$30,631, and
- Male residential community corrections: \$20,471.

The average number of cases in which an individual is placed on probation over a two year period in the magistrate courts is 51 thousand. On average defendants are on probation seven months. Defendants from the magistrate courts placed on probation by all magistrate courts, would cost the general fund could be about \$82.9 million annually if those individuals were under standard supervision by the NMCD. The estimate assumes one defendant per case. Data is not readily available from the numerous municipal courts. The number on supervised probation based on a conviction in the Bernalillo County Metropolitan Court (BCMC) 2,190. These defendants are not included in the impact to the general fund because BCMC employs 12 probation officers to supervise them.

A probationer accused of being a fugitive from justice would be entitled to an appeal de novo in district court and possibly a second appeal to the Court of Appeals, as happened in the *Begay* case. Thus, the amendments would impose some additional burdens on courts, prosecutors, and the public defender. Depending on the increase in the number of cases filed, the cost to the PDD, district attorneys and district courts will also increase. However, it is not possible to quantify the amount with any certainty. Although it is difficult to accurately estimate the cost of increased trials because of this or similar legislation, it is important to note that the average salaries, benefits and other costs yearly for the district courts, district attorneys and public defenders are as follow:

- PDD: \$152.1
- District Attorneys: \$195.4
- District Courts: \$335.6

SIGNIFICANT ISSUES

The AOC, AODA, PDD, and AGO all cite the New Mexico Court of Appeals, in *State v. Begay*, No. 33,588 (Ct. App. filed January 13, 2016), which made it clear that all sections of the Probation and Parole Act, aside from Section 31-21-9(A) NMSA 1978, apply only to people sentenced by a district court. This is because the definition section, which this bill seeks to amend, currently says that “‘probation’ means the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under

a suspended or deferred sentence and subject to conditions;” and “‘adult’ means any person convicted of a crime by a district court.”

The major provision of the Probation and Parole Act at issue in the *Begay* case was Section 31-21-15(C) NMSA 1978, which allows a court to toll the running of a defendant’s probation while a warrant is outstanding, and the defendant cannot be found to answer for the violation. As a result of the statutory limitation of this provision to only adults convicted by a district court, “when a defendant is convicted of a crime in magistrate court, placed on probation in lieu of serving a prison sentence, violates the terms of his probation, and cannot be located to answer for this violation until the period of his suspended sentence has expired, tolling does not apply, and the defendant is relieved of his obligations without any apparent consequence.” *Begay*, ¶ 1. This tolling provision is not available to the courts of limited jurisdiction in any of the other statutory authorities which allow those courts to suspend or defer a sentence, set conditions of probation, and provide for the return of a probationer to answer any alleged violations.

“Although it seems that the Legislature’s decision in 1984 to require the magistrate court to order probation when deferring or suspending a sentence would have been logically followed by an amendment to the Probation and Parole Act to provide that the term ‘probation’ under the Act also applies to persons convicted in magistrate court, [the Court] cannot judicially amend the Probation and Parole Act to reach this result.” *Begay*, ¶ 6. This Bill seeks to make that amendment, not only for the magistrate courts, but all courts with criminal sentencing authority.

ADMINISTRATIVE IMPLICATIONS

This proposed change may reduce the administrative burden on magistrate, metropolitan, and municipal courts in regard to monitoring compliance with conditions of probation, by providing those courts with the resources available to district courts under the Probation and Parole Act; however, it will increase the burden on the NMCD Probation and Parole Division.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Duplicates Senate Bill 257 and House Bill 296, except that these bills add municipal courts.

OTHER SUBSTANTIVE ISSUES

PDD notes that the time in which the State may ask the Supreme Court to review the Court of Appeals Opinion in *Begay* does not expire until February 12, 2016. If the Supreme Court decided to reverse the Court of Appeals no further action would be required by the Legislature to “overturn” the result. The Legislature may decide it is better to take a “wait and see” attitude given the number of other pending bills.

Overall, as recognized by the Court of Appeals, the basic issue addressed by the proposed amendment was/is one that for this Legislature to decide – whether the additional cost of expanding the Probation and Parole Act to include all minor offenses prosecuted in courts of limited jurisdiction is justified by the perceived benefits. Those costs, while real, are difficult to predict or quantify – as is the frequency with which this becomes a problem.

The Legislature may also wish to consider whether, even if it wishes the “tolling” provisions of Section 31-21-15 to be expanded, it also wishes to impose a duty on the Director under Section

31-21-7 to “provide probation ... services and supervise probationers” for all magistrate and metropolitan courts. Similarly, changing the definition section appears to mandate the expansion of the intensive supervision program under Section 31-21-13.1 to address persons who pose a high risk of noncompliance with probation but who also have only been convicted of a minor crime. If not, it may wish to consider amending Section 31-21-15 directly rather than amending the definitions section of the Act.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

If the proposed bill is not enacted, then the Judges of the Metropolitan Court will be unable to toll a defendant’s sentence when that defendant violates conditions of probation. If the Court cannot toll, the incentive will be for defendants to plea, negotiate a suspended or deferred sentence, and abscond. Then, so long as a defendant can avoid being arrested on any outstanding bench warrants until after the period of the original sentence has expired, the defendant will never have to face the consequences of the crime for which the defendant has been convicted. As the Metropolitan Court is a Court of limited jurisdiction, the maximum sentence on many of the crimes over which the Court has jurisdiction is less than one year. For example, the domestic violence crime of assault against a household member under NMSA 1978, § 30-3-12 carries a maximum sentence of incarceration of six months. Without tolling, then the potential days of incarceration is essentially reduced to zero if a defendant absconds.

While the Metropolitan Court is a Court of Limited Jurisdiction and does not have jurisdiction over felonies, it is a Court of record per NMSA 1978, § 34-8A-6(C) for domestic violence and driving while under the influence of intoxicating liquors or drugs. These are serious crimes. In addition, the Victims of Crime Act, NMSA 1978, § 31-26-1 et seq., includes at least five misdemeanors, within its definition of “criminal offense” in Section 31-26-3(B). These are crimes that are considered to be of such a serious nature that a victim is entitled under the Victims of Crime Act to notice and an opportunity to be heard at various stages in the criminal proceeding, including any post-sentencing hearings.

If the Court does not have the power to toll, so that it can revoke conditions of probation and impose the original sentence when a defendant has violated the terms of probation and been a fugitive from justice, then the ability of the Court to ensure that defendants are held accountable for the crimes for which they are convicted will be severely limited. Without this important tool, rather than suspend or defer sentences and place defendants on probation or allow them to participate in the Court’s many successful post-adjudication, pre-sentence specialty court programs such as the Court’s DWI/Drug Courts (DWI Recovery Court and the Urban Native American Healing to Wellness Court) and the Court’s Domestic Violence Repeat Offenders Program, full sentences may be imposed, which means more defendants will be incarcerated. These specialty court programs have been proven to reduce recidivism and to enhance community safety, promote evidence-based practices for offender accountability, and promote offender rehabilitation. However, without the power to toll, the numbers of defendants participating in these important programs may be greatly reduced.

This bill is critical to the operations of the Metropolitan Court and would allow the Probation and Parole Act to be updated consistent with creation of the Magistrate and Metropolitan Courts.