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FISCAL IMPACT REPORT

ORIGINAL DATE 01/23/18

SPONSOR Rehm LAST UPDATED _____ HB 27

SHORT TITLE Change Parole to Supervised Release SB _____

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		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)
- Public Defender Department (PDD)
- Children, Youth and Families Department (CYFD)
- Administrative Office of the District Attorneys (AODA)
- Department of Public Safety (DPS)

SUMMARY

HB 27 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. 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.

Further, this bill provides that after a hearing upon return, if the court finds the child willfully 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.

FISCAL IMPLICATIONS

There is no appropriation included in HB 27, however CYFD previously 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.

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 supervised release is an important tool in the 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 into the community. Section 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 reported there is currently nothing in the delinquency statute which might discourage a youth from absconding from supervised release. CYFD stated the agency has long struggled with the lack of remedies of accountability for youth who abscond from supervised release. Right now, 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. There exists no statutory or procedural prohibition that would urge or compel a child *not* to abscond.

The CYFD also stated will toll the period of supervised release from the time the warrant is issued until such time the warrant is served. Essentially, this shall “return” the lost absconder time to the youth for the purpose of affecting the goals of rehabilitation and continuing to ensure the safety of the youth and the community. This change will essentially mirror the current process that exists for youth that abscond while under Probation Supervision status. It will also provide CYFD with more options to treat youth upon warrant return and hearing, such as re-establishment of appropriate placement and reassessment of needs.

OTHER ISSUES

Similar legislation, HB 16, introduced in the 2017 legislative session addressed this use and contained several provisions that do not appear in HB 27:

- Permitted the children’s court attorney from the district where the child was initially committed to file a petition alleging that the child has willfully absconded from supervised release. (Subsection E)
- Provided that if the court finds beyond a reasonable doubt that the child willfully absconded and that it is necessary to safeguard the welfare of the child or the public’s safety, the court is permitted to extend the child’s commitment not to exceed 6 months on a short-term commitment, not to exceed one year on a long-term commitment or until the child reaches the age of 21. (Subsection E)
- Required the extension of the child’s commitment under Subsection E to follow the procedures to extend a child’s commitment in Section 32A-2-23 NMSA 1978, (original Subsection E), or to require notice and a hearing for any extension of a child’s commitment. (HJC amendment to Subsection E)

HB 27 does not provide for the filing of a petition alleging a child has willfully absconded from supervised release, does not place a cap upon the extension of a child’s commitment, and does not require that Section 32A-2-23 NMSA 1978 procedures be followed, or notice and a hearing be required for any extension of a child’s commitment. HB 27 does provide that “after a hearing upon return...” and upon a finding, specified times shall not be counted as time served on supervised release, but does not require notice and a hearing. 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 the Subsection (A) divestiture of court jurisdiction, permitting a child to motion the court to modify a disposition.

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 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).

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 27 are not clear and could cause confusion.

KK/sb