

LFC Requester: _____

**AGENCY BILL ANALYSIS
2018 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original X **Amendment** _____
Correction _____ **Substitute** _____

Date Jan. 21, 2018

Bill No: HB 27

Sponsor: William "Bill" Rehm

Agency Code: 264

Short Change Parole to Supervised

Person Writing Gary Cade

Title: Release

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY18	FY19		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY18	FY19	FY20		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY18	FY19	FY20	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 27 would substitute “supervised release” for current term of “parole” in the statute regarding revocation of parole for children adjudicated as a delinquent child or youthful offender and committed to the custody of the children, youth and families department (“CYFD”). It would also add a new subsection to the statute that after issuance of a warrant for a child found to have “willfully absconded from supervised release” the child would not be entitled to credit for time served on supervised release from the date they absconded until their arrest.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

Proceedings involving juveniles do not involve conviction of a crime, unless they are determined to be a serious youthful offender, or a youthful offender who is not amenable to treatment or rehabilitation as a child in available facilities and the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. See, Sec. 32A-2-18, and Sec. 32A-2-20(B), NMSA 1978. Juvenile probation and parole services are provided by CYFD, who have a variety of powers and duties, one of which is to, “...supervise and assist a child placed on probation or supervised release or under supervision by court order or by the department.” See, Sect. 32A-2-5(A) and (B)(4). CYFD has exclusive jurisdiction and authority to release an adjudicated delinquent child during the term of a child’s commitment subject to the Victims of Crime Act and procedures involving the juvenile public safety board. See, Sect. 32A-2-23.1 NMSA 1978. Since most of the procedures involving juveniles do not involve a “conviction,” and custody of the juveniles is handled by CYFD, it seems appropriate to change the terminology involving them to “supervised release” in place of parole as proposed in HB 27. However, an exception should be noted for juveniles adjudicated as a youthful offender or as a serious youthful offender that receive an adult sentence because their determination of guilt is

classified as a “conviction,” and they can be sentenced to the department of corrections and placed on parole. See, Sec. 32A-2-3(H) and (J) and Sec. 32A-2-18(C), NMSA 1978. See generally, *State v. Jones*, 2010-NMSC-012 (explanation of sentencing procedures and requirements for imposing an adult sentence for a youthful offender.)

HB 27 would also establish a new provision that a warrant can be issued for a child who allegedly absconded from supervision and if it is found the child willfully absconded from supervised release they would not be entitled to create credit for time served on their supervised release from the date of the violation to the date of their arrest. Cf., Sec. 31-21-15(C), NMSA 1978 (If it is found that a warrant cannot be served for the return of a probationer, they are a fugitive from justice. At a hearing upon return if the probationer has violated the conditions of their release the court shall determine whether the time served from the date of the violation to the date of their arrest, or any part of it, shall be counted as time served on probation). A probationary term is tolled whenever a probationer absconded and it is found that a warrant for their return cannot be served. See, *State v. Neal*, 2007-NMCA-086.

The State bears the burden of proving the probationer is a fugitive, and tolling of their sentence is only permitted where the probationer’s voluntary or wrongful actions caused him to be outside of the court’s control and probation supervision. See, *State v. Hinojos*, 2014-NMCA-067. Since adult probationers and parolees can have all or part of the time when they were an absconder credited to their time on supervision, juveniles may claim a denial of equal process since HB 27 flatly states that none of the time from their violation until their arrest date shall be counted as time on supervision and that it must be added to their supervised release term. Adult probationers who abscond, or simply fail to report for supervision, often claim that it was because of circumstances beyond their control and fail to admit the allegations. See, e.g., *Hinojos*. The bill requires a hearing and a finding that the child willfully absconded to toll their supervised release period. Juveniles might emulate what adult absconders do and require the State to prove they “willfully” absconded. Willfully is not defined by the bill but the cases involving adults should provide guidance to the courts if the bill is adopted.

CYFD “...shall have exclusive jurisdiction and authority to release an adjudicated delinquent child during the time of the child’s commitment...” See, Sec. 32A-2-23.1(A), NMSA 1978 and *State v. Adam M.*, 2000-NMCA-48, *State v. Dennis M.*, 104 N.M. 619 (Ct. App. 1986). The decision to release a child shall be made by the secretary of CYFD or their designee, and they shall receive information from the juvenile public safety advisory board and decide whether to release a child release based upon consideration of multiple factors: public safety, extent to which the child has been rehabilitated, adequacy and suitability of the proposed release plan, and best interests of the child. See, Sec. 32A-2-23.1(A)-(B) and Sec. 32A-7-6(A), NMSA 1978. A child who might be released from supervision or face an extension of their supervised release might claim the department should not be both alleging they “willfully absconded,” and deciding that because of the conflict of interest and there is a presumption in favor of children not being incarcerated. Presumably a hearing officer could be appointed (Cf., Sec. 32A-2-13, NMSA 1978. Special master may handle juvenile detention hearings) but working out the procedures on this issue if the bill is adopted may be initially problematic and lead to appellate challenges.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS