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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/7/15

SPONSOR Rehm LAST UPDATED 3/10/15 HB 197/aHSCAC/aHJC

SHORT TITLE Delinquency Act Terms, Petitions & Changes SB \_\_\_\_\_

ANALYST Kludt

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

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

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

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

#### Responses Not Received From

Attorney General's Office (AGO)

### SUMMARY

#### Synopsis of HJC amendment

This amendment clarifies that the issuance of a warrant, *upon the finding* that the child has absconded from supervised release, rather than *on the basis* that the child has absconded from supervised release, shall toll the supervised release period. The HJC amendment to Subsection E also clarifies that if the court finds that the child willfully absconded from supervised release and that it is necessary to safeguard the welfare of the child or the public's safety, the court may extend the child's commitment not to exceed 6 months on a short-term commitment and not to exceed 1 year on a long-term commitment or until the child reaches the age of 21.

#### Synopsis of HSCAC amendment

This amendment removes the word "retake" twice from the bill: once in the title and once on page 3 line 4. The word retake was modifying "warrant".

Synopsis of Bill

House Bill 197 updates language in the Delinquency Act of the Children's Code from "parole" to "supervised release" and from "parole board" to "public safety advisory board." This bill also allows the District Attorney's office (Children's Court Attorney) to file a new petition alleging a child has willfully absconded from supervised release. If the Court finds that it is necessary to safeguard the welfare of the child or the public's safety, the court may extend a child's commitment for up to one six-month period on a short-term commitment and up to one-year on a long-term commitment until the child reaches the age of twenty-one. Finally, this bill tolls the time of supervised release when a child absconds and a warrant has been issued.

**FISCAL IMPLICATIONS**

There is no appropriation attached to this bill, and the Children, Youth and Families Department does not believe there will be any additional implications on the agency operating budget.

However, the Administrative Office of the Courts (AOC) reports there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and petitions filed alleging a child has willfully absconded, and hearings associated with the same. In general, new laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Additionally, the Administrative Office of the District Attorneys (AODA) reports that to the extent HB 197 provides for additional proceedings to be brought by the children's court attorney (a function of the district attorney's office), there will be additional costs to the district attorneys, however no estimate was provided,

**SIGNIFICANT ISSUES**

Synopsis of HJC Amendment Significant Issues

This amendment changes all "parole revocation" to "supervised release" which is the appropriate term. The change in section D accurately reflects that the issuance of a warrant will require a finding that the child has absconded from supervised release.

The HJC amendment would permit extensions *not to exceed* 6 months and *not to exceed* 1 year, respectively, which would be the same as "up to *and including*" a 6-month period or a one-year period. The addition of the word "or" in the phrase, "*or until the child reaches the age of 21,*" according to the AOC, seems to correct what may have been an impossibility in some cases: that of extending the commitment until the child reaches the age of 21 in any instance where a child, at the time of commitment extension, was less than 20 years and 6 months old, in the case of a short-term commitment, and less than exactly 20 years old, in the case of a long-term commitment.

Synopsis of HSCAC Amendment Significant Issues

The HSCAC amendment changes the phrase "retake warrant" to "warrant" in the title of the bill and in one new subsection created by the bill. However, the AODA notes the phrase "retake

warrant” appears elsewhere in the original statute.

Subsection B of Section 32A-2-25 NMSA 1978 (renumbered as subsection C by the original HB197) describes the warrant that may be issued by the department upon the completion of a preliminary hearing to revoke a juvenile’s parole. HB197 substitutes the phrase “supervised release” for parole. The first sentence of subsection B uses the term “retake warrant” to describe this type of warrant, and then shortens the reference to “warrant” in the rest of the sentence. The second sentence returns to using the phrase “retake warrant.”

Additionally, subsection D contains a description of the type of warrant at issue, so the AODA believes there is no need to call it a “retake warrant:” “The issuance of a retake warrant, on the basis that the child has absconded from supervised release, shall toll the supervised release period.” If redundancy is the issue, the AODA believe further clarification is necessary regarding the use of “retake warrant” in the rest of the statute. (See amendments section)

The AOC reports that HB 197 provides that the issuance of a retake warrant, on the basis that the child has absconded from supervised release, shall toll the supervised release period, without requiring that a hearing be conducted to determine whether credit shall be given for any of the time tolled. Additionally, the agency believes there is no mechanism within this bill to challenge the tolling of the supervised release term and the imposition of a commitment extension.

#### Synopsis of Bill Significant Issues

HB 197 amends the Delinquency Code, parole is an outdated concept and term in the juvenile justice system and this bill updates the language to recognize current concepts and terminology. Currently, there is nothing in the delinquency statute which might discourage a youth from absconding from supervised release; this bill addresses that issue by adding the option for the District Attorney’s offices to file a petition alleging that the child has willfully absconded from supervised release with a potential penalty of extending the commitment by six months to one year.

CYFD reported the agency has long struggled with remedies for youth who abscond from supervised release. Currently, CYFD must discharge a youth on the expected 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.

When a child absconds while on supervised release and is subsequently discharged per the current statutory schemata, the safety of the child and the public are at risk. First, the child has not completed required programming and rehabilitation opportunities. As such, absconding youth present at higher risk for recidivism according to CYFD. Second, a great many of these post-commitment programs (including residential placements) involve the treatment of serious issues, e.g., substance abuse, mental illness, sex offender treatment. CYFD believes the abrupt termination of these types of programming may have serious implications for the safety of the child as well as for the safety of the community.

HB 197 will allow for 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 the purpose of affecting the goals of rehabilitation and

continuing to ensure the safety of the youth and the community. The agency also believes this bill will also provide CYFD with more options to treat youth upon warrant return and hearing, e.g., re-placement, reassessment of needs.

Secondly, the bill would allow for a petition to be filed if the youth is on supervised release status and absconds. This change would provide a process for high risk youth to have their commitment time extended as they present as a risk to themselves or others.

## **PERFORMANCE IMPLICATIONS**

CYFD reports that if the new possibility of the DA's offices filing a petition for willfully absconding serves as a deterrent, CYFD may see higher successful completion rates due to fewer walk-aways from CYFD-run re-integration centers or absconders among those serving supervised release in their communities. If the DA offices do file these petitions, and the children are adjudicated and sentenced, CYFD may see a few more extended-commitment clients.

## **TECHNICAL ISSUES**

Although HB 197 changes the terminology in the body of Section 32A-2-25 from "parole" to "supervised release," the title of the statute is still "PAROLE REVOCATION – PROCEDURES."

Change all three uses of the word "parole" to the phrase "supervised release" to bring the language of the bill in line with the language in statute.

## **RELATIONSHIP**

HB 433 provides for increased penalties for escape from custody in Children, Youth and Families Department facilities, while HB197 address absconding from supervised release.

## **OTHER SUBSTANTIVE ISSUES**

There is no mechanism within HB 197aa to challenge the tolling of the supervised release term and the imposition of a commitment extension.

## **AMENDMENTS**

### Synopsis of Amendment

The AODA recommends that because "retake warrant" is described in original subsection B, another way to remove the redundancy and simplify the statute would be to leave the phrase "retake warrant" in subsection D, but remove the language describing a retake warrant as being issued "on the basis that the child has absconded from supervised release."

### Synopsis of Original Bill Amendments

The Public Defender Department (PDD) states it appears that an allegation of absconding tolls the time supervised release. The agency believes that whether the time was tolled should be depended on a factual finding of willfully absconding rather than an allegation. If the child had

willfully absconded, then the time will have tolled and if not, then the time counts as served under supervised release. However, upon the allegation of absconding, the court will retain jurisdiction to determine whether a violation of supervised release term did occur.

PDD submitted that adding language similar to that in NMSA 1978 § 31-21-15(C) (below) could cure this.

“After hearing upon return, if it appears that the Child has violated the provisions of his release, the court shall determine whether the time from the date of violation to the date of his arrest, or any part of it, shall be counted as time served on probation.”

KK/bb