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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Sedillo Lopez/ Hochman-Vigil	<b>ORIGINAL DATE</b>	02/18/21		<b>HB</b>
		<b>LAST UPDATED</b>	03/17/21		247/aSHPAC/aSJC/ aSFI#1/aHJC
<b>SHORT TITLE</b>	Juvenile Life Sentences W/Out Parole				<b>SB</b>
					<b>ANALYST</b> Chilton

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Uncertain	Uncertain	Uncertain	Uncertain	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases) **Note: costs to parole boards, defenders and prosecutors likely increased; costs of incarceration probably decreased. See "Fiscal Implications."**

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the Attorney General (NMAG)  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (LOPD)  
 Children, Youth and Families Department (CYFD)  
 New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of HJC Amendment

The House Judiciary Committee amendment to Senate Bill 247 removes language from the act that would have allowed the warden of the institution in which a serious youthful offender is incarcerated to recommend an earlier parole hearing than the fifteen years after sentencing mandated by the previously-amended bill. Such an earlier parole hearing could still occur pursuant to other applicable laws.

#### Synopsis of SFI#1 Amendment

The Senate floor #1 amendment to Senate Bill 247 makes a change to lengthen the interval for required repeat parole hearing to five years (instead of two) after the initial required parole hearing fifteen years after sentencing a serious youthful offender or a youthful offender sentenced as an adult.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 247 adds a provision to the bill to allow those injured by a juvenile's actions and/or their contacts, to either choose in writing to be notified of a parole hearing for the person who was convicted of a serious crime and to submit testimony on each occasion or to choose in writing not to be notified.

Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 247 makes a single change, making the first mandatory parole hearing fifteen years, rather than ten years, after a serious youthful offender is sentenced.

Synopsis of Original Bill

Senate Bill 247 would amend Section 31-18-15 NMSA 1978 (part of the criminal sentencing code) to prohibit the imposition on minors convicted of serious crimes of the sentence of "life imprisonment without the possibility of parole." It then sets forth parole considerations to be applied to current and future prisoners serving life sentences convicted as "serious youthful offenders" and "youthful offenders" at ages between fourteen and eighteen.

In Section 31-18-15.2 NMSA 1978, "serious youthful offender" is defined as a person of that age convicted of first degree murder, and "youth offender" as one of the same ages convicted of one of twelve enumerated serious crimes.

Section 3 of the bill proposes a new Section 31-21-10.2 NMSA 1978, entitled "parole for children sentenced as adults." It is to be applied to children to be sentenced in future cases as serious youthful offenders or youthful offenders; section 5 of the bill applies the parole provisions to any currently incarcerated inmates sentenced at ages fourteen to eighteen.

Parole board hearings would be first held no more than ten years after institutionalization, and if parole was denied then, at two year intervals thereafter. The parole board is to take into account the following factors in deciding whether to grant parole:

- a statement by the victim or a relative of the victim;
- the offender's age at the time of the offense;
- the nature of the offense and characteristics of the offender;
- whether the offender has substantially complied with the rules of the institution where they are held and whether they have completed any available education or training program;
- whether the offender has demonstrated maturity, rehabilitation, and fitness to reenter society;
- physical, mental or psychiatric reports about or examinations of the offender;
- the offender's family and community circumstances at the time of the offense including any history of abuse, trauma, or involvement in the child welfare system;
- diminished culpability of juveniles, including immaturity, impetuosity and failure to appreciate risks and consequences.
- any other factors thought by the parole board to mitigate or exacerbate the severity of

the crime for which the potential parolee was convicted.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

### FISCAL IMPLICATIONS

There is no appropriation within Senate Bill 247.

Courts and especially prosecutors and defenders could expect some increased costs from need to attend to increased court and parole board hearings. The public defender's department provides a framework for approximation of these costs as follows:

Section 3(D) creates a right to counsel and will give rise to additional representation obligations for the LOPD without an appropriation. Although not all who are eligible for a parole hearing may elect to have LOPD representation, all would likely qualify for LOPD representation based on the Indigent Defense Act, which includes “a needy person who is being detained by a law enforcement officer, or who is under formal charge of having committed, **or is being detained under a conviction of, a serious crime.**” NMSA § 31-16-3(A) (emphasis added).

Preparation for and representation in these parole hearings will likely require substantial work by experienced attorneys, social workers, investigators, and expert witnesses. Most hearings would require a mitigation expert, which costs approximately \$2,500 per case. Cases requiring a psychological evaluation could cost anywhere between \$2,500 - \$10,000. The retroactivity provision means that, upon the effective date of the legislation, there could be dozens of inmates eligible for parole hearings. LOPD estimates that approximately 40 inmates would become parole eligible upon the effective date of this bill. Thereafter, based on prior trends, initial parole eligibility would drop to fewer than 5 per year.

LOPD anticipates some of the initial 40 cases will be handled by non-LOPD counsel. As noted above, much of the costs associated with this bill would likely be temporary: during the first two or three years after the bill's effective date. To fund the expert witness costs, a short-term (two-year) appropriation for the initial batch of hearings would likely be necessary.

In defending juvenile clients *charged* with crimes for which an adult sanction is a possible outcome, SB47 would certainly have an impact on strategy and the possibility for plea negotiations, but it is difficult to predict whether those changes would have any fiscal implication.

As the costs of incarceration are high (estimated in 2015 by the Vera Institute of Justice at \$36,832/year/prisoner), it could be those costs would be offset by savings when effectively rehabilitated prisoners are released on parole.

### SIGNIFICANT ISSUES

Both NMAG and AOC point out that a mandatory life sentence without parole for a crime

committed by a child under the age of 18 is already prohibited by the U.S. Supreme Court in its 2012 decision *Miller v. Alabama*, 567 U.S. 460, 470.

It appears as if New Mexico courts have already taken this into account: AOC reports that “According to the Sentencing Project, New Mexico does not have any one serving a juvenile life without parole sentence. (*See*, <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>.) New Mexico law also allows for parole hearings after thirty years in sentences of life imprisonment. *See*, NMSA 32-21-10. Therefore, it does not appear that this bill will create a significant change in sentencing for children sentenced as adults.”

CYFD states that “According to a January 25, 2021 article from the Sentencing Project, 24 states and the District of Columbia have banned life sentences without the possibility of parole for juveniles. In a handful of other states, including New Mexico, no one is currently serving such a sentence. This bill thus works to align New Mexico with Juvenile Justice Reform efforts throughout the country by acknowledging that children are different from adults in ways that are critical to identifying appropriate criminal sentences. This legislation does not guarantee release of these offenders, but provides an opportunity for review be granted to consider the individual circumstances of each offender.”

AOC quotes evidence used in the above-mentioned *Miller* decision establishing that teenagers are a group especially susceptible to impulsive acts and failure to appreciate the consequences of their actions. The New Mexico Sentencing Commission concurs, citing a recent Sentencing Project report ([www.sentencingproject.org/publications/juvenile-life-without-parole/](http://www.sentencingproject.org/publications/juvenile-life-without-parole/)), including the following paragraph:

#### **What Makes Youth Different?**

In amici briefs written on behalf of the defendants in *Roper*, *Graham*, *Miller*, and *Montgomery*, organizations representing health professionals, such as the American Academy of Child Adolescent Psychiatry and the American Psychological Association, explained current research on immature brains. In *Miller*, Justice Kagan noted that adolescence is marked by “immaturity, impetuosity, and failure to appreciate risks and consequences,” all factors that limit an adolescent’s ability to make sound judgments. Justice Kagan cited *Graham* and *J. D. B. v. North Carolina*) in noting that juvenile defendants are at a substantial disadvantage in criminal proceedings; they are less able than adults to assist in their own defenses (working constructively with counsel) and they are likely to respond poorly to the high pressures of interrogation. Even before *Roper*, states routinely recognized differences between juveniles and adults in other contexts. Almost every state prohibits juveniles from voting, buying cigarettes and alcohol, serving on juries, and getting married without parental consent. Teenagers’ drivers licenses are typically restricted through age 18. The *Graham* decision emphasized the importance of giving juvenile offenders a chance to become rehabilitated. These individuals have a substantial capacity for rehabilitation, but many states deny this opportunity: approximately 62% of people sentenced to life without parole as juveniles reported not participating in prison programs in large part due to state prison policies that prohibit their participation or limited program availability. They typically receive fewer rehabilitative services than other prisoners.

**OTHER SIGNIFICANT ISSUES**

Victims of serious juvenile crime or their relatives or other contacts might be re-traumatized by having to submit testimony each time the offender came up for parole. This concern led to the Senate Judiciary Committee amendment, which allows such victims or contacts or relatives to opt out of providing testimony for parole hearings.

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