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## FISCAL IMPACT REPORT

SPONSOR Chasey ORIGINAL DATE 02/25/11  
LAST UPDATED \_\_\_\_\_ HB 469  
SHORT TITLE Technical Violation of Probation Release SB \_\_\_\_\_  
ANALYST Daly

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	(*)	(*)	(*)	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

\*It is not possible to quantify the positive fiscal impact of this bill, so expenditure decreases are indeterminate, but there should be savings. See Fiscal Implications below.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorney (AODA)  
New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 469 requires an expedited release program for probationers who violate a technical condition of their probation. A technical violation is defined as any violation of a probation condition that does not allow for new criminal charges. Under the bill, each judicial district must form its own expedited release program commission consisting of the local district attorney, public defender, chief administrative judge, a local probation and parole division representative, and a representative of the local county commission. Each commission must adopt policies and procedures related to the expedited release program, which at a minimum must include providing that the probationer not contest the alleged violation, submit to sanctions in accordance with the local district rule, and waive certain provisions if a Supreme Court rule of criminal procedure. Each program must be approved by the Supreme Court.

This bill carries an effective date of July 1, 2011.

## **FISCAL IMPLICATIONS**

The AOC reports this bill could result in a significant drop in hearings in courts. It is difficult to determine with any reliable accuracy how many probation violations are set for hearing that would be resolved by the local programs required by the bill, but many probation violation hearings increase court dockets around the state. Perhaps as many are not reported by probation and parole officers because of the likelihood that no significant consequences await the probationer if the violation is taken to court. It is, again, difficult to determine exactly how much time and work, for the judiciary as well as district attorney and public defender staff, this bill would save, but the effect most likely will be a tangible fiscal savings for all those involved in probation violation cases.

Further, the NMCD notes that this bill seems focused on saving the county jails money (along with courts, prosecutors and defenders) by preventing technical violators from sitting in jail for periods of time awaiting a probation violation hearing and final disposition by the sentencing judge. The bill will likely save the counties some money in this regard, but it will not directly save NMCD any money. However, if the bill results in some technical violators not losing their jobs or homes because they are able to quickly reenter society after serving a short sanction or jail term, then some of these offenders may be able to avoid committing new crimes or other more serious violations of their conditions of probation associated with those types of losses. If so, then ultimately fewer probationers will be revoked and be sent to prison. This would save NMCD money, but the amount saved is unknown at this point.

## **SIGNIFICANT ISSUES**

This bill is modeled on a Supreme Court rule authorizing development and implementation of an expedited release program for technical violations of conditions of probation. That rule is permissive, while HB 469 requires each judicial district to institute such a program.

The AOC provides these comments on this bill:

Judges have the discretion to place individuals on probation for conviction of many offenses, from traffic tickets to felonies, so long as incarceration is not mandated by statute. Standard probation terms are used statewide to which virtually all probationers agree. Other specific probation terms may be imposed for such offenses as DWI, domestic violence, and property crimes. A probationer may be a day late on a restitution payment, or leave a counseling session early, or spend time with the wrong acquaintance. Each of these circumstances can be a probation violation. Judges will often simply re-impose existing conditions on the technical violator, but at least the violation is of record. Each violation, no matter how trivial it may appear onto itself, ought to be documented in order that the probationer remains respectful of the entirety of the probation process. If probation and parole officers cannot get each technical violation before a judge because of the crush of business, the hazard is that the probationers might believe there are no consequences for violation of his or her agreement.

This bill as drafted would avoid that situation.

The AOC further advises:

From the perspective of the judiciary, each report of a probation violation requires judicial employees and judges to perform a myriad of tasks. If an individual is arrested as a violator, that individual gets many of the same rights to appear as a defendant charged with a crime in the first instance. This means first appearances, bond hearings, status hearings, and trials, if necessary. Notices, pleadings, payment processing, filing, and data entry is a necessary part of each of these steps. Because each of these steps is in cooperation with the district attorney, the public defender, law enforcement and corrections staff, the work that these low-risk probation violations is expanded four-fold.

The breadth of the consensus required by HB 469 provides an opportunity for considerations of economy and efficiency to be weighed carefully against public safety.

The requirement that each program be approved by the Supreme Court may help ensure uniformity in the sanctions imposed by the different programs.

The NMCD expresses concern as to two classes of probation violators: those that abscond from probation, and those that demonstrate a pattern or consistent or repeated violations of the technical conditions of their probation. As to absconders, the NMCD believes they jeopardize public safety and should not be subject to the sanctions program. As to repeat violators, the NMCD recommends they be at some point subject to full revocation (and imprisonment).

### **TECHNICAL ISSUES**

The reference in Section 2(B) (2) to a local judicial rule is unclear. If an expedited release program is to be implemented through the adoption of such a rule, the bill might so state.

### **OTHER SUBSTANTIVE ISSUES**

The AOC notes that Section 2(B) (3) of the bill provides for waiver of certain rights found in the Supreme Court's criminal procedure rules. Since it is solely the Supreme Court's prerogative to issues rules of procedure, it may be problematic for a statute to waive court rules.

Moreover, the rules to which the bill refers are district court rules. Without expansion of expedited release programs to magistrate and metropolitan courts, the AOC notes that the same sort of low-level probation violation practice will continue, only in much greater numbers than at the district court level.

### **AMENDMENTS**

The NMCD suggests amendments to exclude probation absconders from the definition of technical violation, and include a provision subjecting technical violation offenders to full revocation if they show a pattern or consistent or repeated violations of the technical conditions of their probations.

The AOC suggests that rather than the waiver of rules required in Section 2(B) (3), if the bill listed the substantive rights to be afforded a violator who participates in a program, this issue would be resolved.

Additionally, the expansion of the programs to metropolitan and magistrate courts might increase the benefits of this bill.

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