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| LFC Requester: | |
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**AGENCY BILL ANALYSIS
2015 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: Date 1-21-16
Original **Amendment** **Bill No:** HB183
Correction **Substitute**

Sponsor: Tim D. Lewis **Agency Code:** 264
Short Title: Dual Sentencing of Youthful Offenders **Person Writing:** Gail MacQuesten
Title: Offenders **Phone:** 466-0532 **Email:** gailmacquesten@q.co

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

| Appropriation | | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY16 | FY17 | | |
| 0 | 0 | n/a | n/a |
| | | | |

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

| Estimated Revenue | | | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY16 | FY17 | FY18 | | |
| 0 | 0 | 0 | n/a | n/a |
| | | | | |

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY16 | FY17 | FY18 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|-------------|-------------|-------------|--------------------------|----------------------------------|----------------------|
| Total | 0 | minimal | minimal | unknown | recurring | general |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: n/a

Duplicates/Relates to Appropriation in the General Appropriation Act n/a

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

HB183 amends the Delinquency Act, establishing a new sentencing option for youthful offenders who are amenable to treatment that combines the fines and dispositions available under the Delinquency Act with an adult criminal sentence. The execution of the adult sentence shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

If the youthful offender violates any condition or is alleged to have committed a new offense, the court may direct that the youthful offender be taken into immediate custody. The youthful offender may request a hearing, at which the children’s court attorney must present proof of the violation to a reasonable certainty. If the youthful offender is found to have violated the terms of suspension of the adult sentence, the court shall order execution of the previously imposed sentence unless the court makes written finds of mitigating factors that justify continuing the stay.

Before an offender who has received a stayed adult sentence reaches the age of 21, the court shall hold a hearing and:

- Revoke the suspension, order execution of the adult sentence and direct that the offender be taken into immediate custody;
- Order execution of the adult sentence and place the offender on probation; or
- Order release of the offender.

Once the adult sentence is imposed, the offender’s youthful offender status is terminated. Ongoing jurisdiction for any adult sanction is with the adult court.

If the offender is ordered to serve probation and successfully complete probation, the adjudication shall not become a conviction for purposes of the Criminal Code, and the court shall enter a conditional discharge.

If execution of the adult sentence is ordered, all time served by the offender under the juvenile disposition shall be credited toward the adult criminal sentence imposed.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

HB183 will increase costs for the courts, the department of corrections, public defenders and district attorneys. Courts will need to make additional determinations regarding which sentencing structure to apply, additional hearings are required to impose and administer dual sentencing provisions, and HB183 may result in increased incarceration.

SIGNIFICANT ISSUES

The Delinquency Act currently provides that a youthful offender may be subject to juvenile sanctions, or an adult sentence. Adult sentences are available only if the child is not amenable to treatment or rehabilitation as a child and is not eligible for commitment to an institution for children with developmental disabilities or mental disorders. HB183 establishes a new hybrid sentencing option for youthful offenders who are amenable to treatment. It combines juvenile sanctions with an adult sentence that is stayed unless the youthful offender violates any condition of the stayed sentence or commits a new offense. Before the youthful offender who has received a stayed adult sentence reaches age 21, the court shall hold a hearing and order execution of the sentence, place the offender on probation, or release the offender.

(“Youthful offender” is defined at NMSA 1978, Section 32A-2-3(J). The definition turns on the age of the offender at the time of the offense, and the seriousness of the crime. For a child 14 to 18 years of age, the crimes include: second degree murder, assault with intent to commit a violent felony, kidnapping, aggravated battery, shooting at a dwelling or occupied building or shooting at or from a motor vehicle, dangerous use of explosives, criminal sexual penetration, robbery, aggravated burglary, aggravated arson and abuse of a child that results in great bodily harm or death. Any felony offense committed by a child 14 to 18 may make that child a youthful offender if the child has three prior separate felony adjudications within a three-year time period. And a 14 year old child adjudicated for first degree murder is also considered a “youthful offender.”)

PERFORMANCE IMPLICATIONS

HB183 requires additional findings at the time the sentencing structure is chosen, a hearing if the state petitions to revoke the stay, and a hearing before the offender turns 21.

HB183’s imposition of a stayed adult sentence makes it a powerful deterrent, and an intermediate sanction between juvenile sanctions and adult sanctions. HB183 requires the judge to take into account various factors before imposing dual sentencing, including the seriousness of the offense, whether the offense was against persons or property, the maturity of the child, the previous history of the child, and the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation. The court therefore is instructed to tailor the sentencing response to the offender and the crime, imposing dual sentencing only when it appears appropriate. Staying the adult sentence makes the youthful offender responsible for his or her future actions, with an understanding of the consequences of those actions.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications, above.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None.

TECHNICAL ISSUES

HB183 repeatedly describes the adult sentence imposed under the dual sentencing provisions as being stayed on the condition that the offender not violate the provisions of the disposition order or commit a new offense. Yet Section 6(F) of HB183, describing the hearing to be held before the offender turns 21, provides that the court may order execution of the adult sentence, impose probation or release the offender. No guidance is given on how the court should make its choice. It does not say that if the offender has honored the provisions of the disposition order and has not committed a new offense the offender must be released, or put on probation. Instead, it appears that an offender who has honored the provisions of the disposition order and has not committed any new offense may still be ordered to complete the adult sentence. If this is the intent of the legislation, it should be made clear. If it is not the intent of the legislation, that also should be made clear.

OTHER SUBSTANTIVE ISSUES

None.

ALTERNATIVES

None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Youthful offenders will be subject to the current sentencing structure, which does not provide for a hybrid combination of juvenile sanctions and adult sentencing.

AMENDMENTS

None proposed.