

LFC Requester:

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AGENCY BILL ANALYSIS  
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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*{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  Amendment   
Correction  Substitute

Date Feb. 2, 2016

Bill No: HB 296

Sponsor: Rod Montoya

Agency Code: 264

Short Convictions In Certain Courts

Person Writing Gary Cade

Title: As "Adults"

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

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

(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 296 would amend the Probation and Parole Act (hereafter “PPA”) and add “magistrate, metropolitan or municipal” courts to the definition for “adult” that now applies only to “...any person convicted of a crime by a district court.” (Emphasis added) The bill would also make a minor grammatical change to the definition of director to reflect a change in terminology from “field services” to “adult probation and parole” division of the corrections department and make it gender neutral.

**FISCAL IMPLICATIONS**

Unknown.

**SIGNIFICANT ISSUES**

HB 296 would address a deficiency in the Probation and Parole Act that has made its provisions applicable only to adults convicted in district court. The PPA was originally adopted in 1955 for application to parolees. Since parole can only apply to persons sentenced to prison and only a district judge can impose a sentence which includes a parole period, its application was limited to district courts. (See, Sect. 31-18-15(C) and Sect. 31-21-10(B) and (D), NMSA 1978). The PPA was amended in 1963 to include probation which has been defined as “...the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions.” (See, Sect. 31-21-5(A), NMSA, 1978). It defined “adult” as “...any person convicted of a crime by a district court.” (See, Sect. 31-31-5(F), NMSA 1978) (Emphasis added). Among the changes to the PPA in 1963 was also including a provision that allowed the sentencing court to “...effectively toll the running of a defendant’s suspended sentence where he has violated the terms of his probation and cannot be immediately located to answer for this violation.” (See, *State v. Begay*, No. 33, 588 (Ct. App. Jan. 13, 2016) citing Sect. 31-21-15(C), NMSA, 1978).

In the *Begay* case the defendant was convicted of battery by the San Juan county magistrate court

and sentenced to 182 days imprisonment. He was given credit for 11 days pre-sentence confinement and placed on supervised probation for the remaining 171 days. Mr. Begay subsequently violated the terms of his probation but could not be located until after the probationary term had expired. When he was finally brought to court the magistrate judge tolled the time when Begay was absent, pursuant to Sect. 31-21-15(C), revoked his probation and sentenced him to serve the remainder of the time in custody, and the district court affirmed that sentence.

After Begay appealed from the district court ruling, last month the Court of Appeals determined the tolling provision cannot be applied because the underlying conviction was obtained in magistrate court. They noted that the legislature had failed to extend the tolling provision to include persons convicted in magistrate court when the magistrate court system was created in 1968. The appellate court rejected an argument that another provision of the PPA requires all persons on probation or parole to be covered by the act and stated that doing so "...ignores the (Probation and Parole) Act's definition of 'probation' and 'adult' as limited to persons convicted in the district court." *Begay, supra*. They concluded "...the tolling provision plainly applies only to 'adult' persons convicted in the district court." *Id.*

In addition to the magistrate courts, there are two other courts inferior to district court that have jurisdiction over criminal cases, metropolitan court in any Class A county (currently only Bernalillo county), and municipal courts in each incorporated municipality. (See, N.M. Constitution, Art. VI, Sect. 1, and Sect. 34-8A-3 (metro court), Sect. 35-3-4 (magistrate court) and Sect. 34-14-2 (municipal court), NMSA 1978). "When a person has been convicted of a crime for which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation..." (See, Sect. 31-20-5(A), NMSA 1978). (Cf., Sect. 35-15-14, NMSA 1978) ("The governing body of any municipality may provide by ordinance that the municipal court may, upon entry of a plea of guilty or judgment of conviction: (1) suspend in whole or party the execution of sentence; or (2) place the defendant upon probation for a period not exceeding one year...")

Adding a specific reference to each of those inferior courts to the definition of "adult" where a person is convicted of a crime—since "adult" also refers to the definition of "probation" in the PPA—should clarify that all of the provisions regarding probation, including tolling pursuant to Sect. 31-12-15, are applicable to anyone convicted of a crime in magistrate or metropolitan court and placed on probation. There is no other specific reference to municipal court in the PPA so a defendant placed on probation in that court who absconds before completing their probationary term may still contend the tolling provision should not apply to them. If the PPA is not amended probationers with criminal convictions in every other court besides district court can continue to abscond until their probationary term has expired without risk of any adverse consequences.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 296 is identical to SB 257.

**TECHNICAL ISSUES**

**OTHER SUBSTANTIVE ISSUES**

**ALTERNATIVES**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

**AMENDMENTS**