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FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez/Chasey **ORIGINAL DATE** 1/28/22
LAST UPDATED _____ **HB** _____
SHORT TITLE Prohibiting Life Without Parole for a Child **SB** 43
ANALYST Mulvaney

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		See Fiscal Implications				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorneys (AODA)
 Administrative Office of the Courts (AOC)
 Corrections Department (NMCD)
 New Mexico Attorney General (NMAG)
 Public Defender Department (PDD)
 Sentencing Commission (NMSC)
 Adult Parole Board (APB)
 Children Youth and Family Department (CYFD)

Response Not Received From

Department of Public Safety (DPS)

SUMMARY

Synopsis of Bill

Senate Bill 43 prohibits the imposition of a sentence of life without parole on a child and provides parole procedures. Currently, a juvenile offender convicted of first-degree murder is subject to the same possible penalties as an adult. Section 1 of SB43 would prohibit a sentence of life *without* the possibility of parole for a juvenile offender convicted of first-degree murder.

Section 2 would amend Section 31-21-10, NMSA 1978 to create a carve-out in normal parole procedures for the new Section 3 of the statute.

Section 3 would create a new statutory section titled, "Parole for children sentenced as adults."

The new statute would apply to both “serious youthful offenders” (convicted of first degree murder and therefore serving a life sentence) and youthful offenders (convicted of other serious felonies and given an adult sentence).

Section 3(A) mandates that such offenders get a parole hearing after serving 15 years of their sentence, unless otherwise eligible sooner. If parole is denied at that hearing, Section 3(B) entitles the offender to subsequent hearings not less than every 5 years thereafter.

Section 3(C) provides a non-exhaustive list of factors the parole board should consider at such hearings.

Section 3(D) provides a right to counsel at such hearings. Section 3(E) clarifies that other aspects of the parole are governed by existing procedures. And Section 3(F) requires the board to conduct an annual review to ensure compliance with the new provisions.

Section 4 of the bill would amend Section 32A-2-20, NMSA 1978 (governing the disposition of a youthful offender) to clarify that, if the court imposes an adult sentence, it may not impose life without parole.

Section 5 would make the new provisions applicable “retroactively to all offenders currently serving an adult sentence for an offense committed as a child.”

FISCAL IMPLICATIONS

As per PDD:

Section 3(D) creates a right to counsel and will give rise to additional representation obligations for the [PDD] without an appropriation. Although not all who are eligible for a parole hearing may elect to have [PDD] representation, all would likely qualify for [PDD] 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. [PDD] 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.

PDD anticipates some of the initial 40 cases will be handled by non-PDD 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, SB43 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 per the Adult Parole Board:

There will be some costs for preparation and the actual hearing of these cases. Typically, a case of this type takes about a day to hear before three parole board members. There is also clerk time to prepare the files which the Board Members will study prior to the hearings to acquaint themselves with the facts of the matter.

As per NMCD:

The fiscal impact of this bill is difficult to estimate as it would require speculation as to whether or not youthful offenders sentenced as an adult are in fact released when eligible for parole when said individuals become eligible, and the rate at which those paroled inmates are returned for violations. The Department does not anticipate a significant decrease in prison population or a significant increase in probation and parole officer's workloads as a result of this bill.

SIGNIFICANT ISSUES

In 2012, the United States Supreme Court found that it is unconstitutional to sentence a child to life without parole, except in the rarest of cases. The U.S. Supreme Court and New Mexico Supreme Court have both recognized that “children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . ‘they are less deserving of the most severe punishments.’” *Miller v. Alabama*, 567 U.S. 460, 471 (2012) (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)) (emphasis added); *see also Ira v. Janecka*, 2018-NMSC-027. Accordingly, children sentenced as adults must be afforded a “meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” *Graham*, 560 U.S. at 74; *Ira*, 2018-NMSC-027, ¶ 1.

SB43 would place New Mexico among those states by both prohibiting life without parole and creating a mechanism for parole review earlier than currently available for juvenile offenders serving either life or lengthy adult sentences.

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, no one is currently serving such a sentence.

This bill therefore will 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.

The effective date of the Act is July 1, 2022.

PERFORMANCE IMPLICATIONS

The Adult Parole Board will need additional resources to absorb the work necessary to prepare for these types of cases. The Adult Parole Board has already heard two cases which would be covered by the terms of this bill. However, how many more will come before the Board is unknown.

OTHER SUBSTANTIVE ISSUES

The bill requires the Adult Parole Board to conduct hearings that include attorneys for the state and the party to the parole. It also requires the input from relatives or other contacts who might be retraumatized by having to submit testimony each time the offender comes up for parole.

As recently as the 2021 legislative session, the Administrative Office of the Courts (AOC) in response to a request for analysis of the substantially similar, after amendment, SB 247, noted 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: 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-lifewithout-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.

See <https://www.nmlegis.gov/Sessions/21%20Regular/firs/SB0247.PDF> .

ALTERNATIVES

Under the decisions of the United States Supreme Court in the Miller Case there is no alternative to conducting parole board hearings of this type. A significant number of other states have already passed this type of legislation and the terms of this bill are consistent with hearings which are being conducted in those other states, some of which have been determined by the United States Supreme Court as complying with the Miller Case.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

By not passing legislation mandating these types of parole hearings the state opens itself to court proceedings which could cause the courts to establish the elements of the parole board hearing thus causing the Legislature to give up its power to determine how this United States Supreme Court Decision will be implemented.

BM/acv