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| <b>LFC Requester:</b> | <b>Julia Downs</b> |
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**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)

*and*

[DFA@STATE.NM.US](mailto: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 01/21/16  
**Original**     **Amendment**        **Bill No:** HB 181  
**Correction**     **Substitute**   

**Sponsor:** Rep. Paul Pacheco    **Agency Code:** 305  
**Short Title:** Absconding from Probation or Parole    **Person Writing:** Greer Rose  
**Phone:** 505.222.9034    **Email:** grose@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring or Nonrecurring | Fund Affected |
|---------------|------|---------------------------|---------------|
| FY16          | FY17 |                           |               |
|               |      |                           |               |
|               |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring or Nonrecurring | Fund Affected |
|-------------------|------|------|---------------------------|---------------|
| FY16              | FY17 | FY18 |                           |               |
|                   |      |      |                           |               |
|                   |      |      |                           |               |

(Parenthesis ( ) Indicate Expenditure Decreases)

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

|              | <b>FY16</b> | <b>FY17</b> | <b>FY18</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>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**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**Synopsis:** House Bill 181 proposes new legislation criminalizing the conduct of absconding from probation or parole. The Bill defines absconding as a probationer or parolee under the supervision of adult probation and parole that: 1) changes residence, or 2) leaves the jurisdiction without permission and 3) lacking a valid, legal excuse for not being available for supervision. HB 181 would make absconding from probation or parole a fourth degree felony.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

The proposed legislation presents a possible issue concerning double jeopardy by a defendant who is punished during a probation and parole violation hearing for absconding and also charged with the crime separate and apart from the violation. In this regard, a person charged with violating the terms of probation/parole would, as a separate matter, be charged with a new crime, namely absconding from the obligation of reporting to probation/parole authorities. A review of this potential issue found that that claim would be unsupported by law. As a threshold, a probation/parole revocation hearing is an administrative determination of whether or not and offender violated the terms and conditions of his parole, and therefore the constitutional protection of double jeopardy do not attach.” Matter of Lucio F.T. 1994-NMCA-144. State v. Neal mirrors the holding in Lucio. In Neal, the defendant argued that it violated double jeopardy to use his shoplifting offense to also revoke probation and parole. The court held it did not. State v. Neal, 2007-NMCA-086.

N/A

**PERFORMANCE IMPLICATIONS**

N/A

**ADMINISTRATIVE IMPLICATIONS**

N/A

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

N/A

## **TECHNICAL ISSUES**

House Bill 181 would impose an affirmative duty on law enforcement to show that the probationer/parolee “lacks a valid, legal excuse for not being available for supervision” in order to enforce this proposed legislation. This requirement would be very difficult to prove, potentially rendering HB181 unenforceable. Making “a valid, legal excuse” an affirmative defense as opposed to an element of the crime would achieve the dual objective of holding offenders accountable for this conduct while at the same time not penalizing individuals who abscond for reasons beyond their control. It would also be beneficial to define the terms “valid, legal excuse,” and “change residence.”

## **OTHER SUBSTANTIVE ISSUES**

Legislation regarding criminal penalties for absconders was identified as a possible consideration under the items discussed by the Office of the Attorney General’s Violent Crime Review Team Final Report. The team specifically included in the final report, the possibility of a felony penalty, and perhaps graduated penalties for absconding from probation and parole after a felony conviction. The need for a felony charge for absconding was identified as a tool to help the effectiveness of probation and parole when ordered by a district court. While there existed some disagreement as to how to implement such change, the final report expressed a genuine recommendation that allowing probationers to be subjected to additional penalties for failing to report to probation authorities would protect the community and serve as a deterrent to violate terms of probation. With this in mind, the current state of the law does not present any further punishment to a person who simply chooses to disregard any condition of probation, other than serving the balance of the jurisdiction of the underlying charge. In some cases, there are defendants who may only have a nominal amount of jurisdiction left in their case, such that they have no disincentive to violate the terms of their probation in light of the term of their remaining potential period of incarceration. This bill would preclude defendants serving a period of probation/parole from being subjected to penalties solely based on the terms of their original probation, allowing a new charge to be based on violating those terms.

## **ALTERNATIVES**

N/A

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

Status quo

## **AMENDMENTS**

The drafters may wish to consider adding language criminalizing probationers and/or parolees that fail to report to the probation/parole authorities but that do not leave the jurisdiction nor change residences. This change would further the intent of this legislation by criminalizing the

conduct of absconders that stay in their respective jurisdictions and don't establish any alternative residence. The drafters may also wish to consider enhancing the degree of felony if the offender commits a new crime while absconding. This can be achieved by way of special verdict form that reads "Do you find that the defendant committed the crime of \_\_\_\_\_ while absconding from probation or parole?"