
Bill Analysis 2020 Regular Session

SPONSOR: Representatives Antonio “Moe” Maestas, Gail Chasey, William “Bill” Rehm, Jane E. Powdrell-Culbert and Alonzo Baldonado

SHORT TITLE: Probation and Parole Clarification

SYNOPSIS OF BILL: This bill makes changes to probation and parole that include: 1) requiring probation and parole officials to consult a validated risk and needs assessments when determining the level of supervision and/or conditions to impose; 2) requiring probation and parole officers to seek departmental guidance before engaging in custodial interventions; 3) collecting placement and arrest data; 4) not charging probationers for probation and parole costs; 5) creating two new sections of the Probation and Parole Act, concerning incentives and sanctions for technical probation and parole violations; and 6) identifying and notifying elderly and terminally ill prisoners who may be eligible for the department’s medical or geriatric parole program.

STRENGTHS: An October 2018 Legislative Finance Committee report concluded that nearly one-third of prisoners admitted to the New Mexico Correction Department (NMCD) were parolees guilty of “technical violations” such as failed drug tests and missed appointments.¹ Implementing an alternative incentive and sanction program could reduce the number of people sent back to prison and save taxpayers some of the \$40 million the state spends annually to house parole violators. That money could then be reinvested to address the underlying causes of crime and recidivism such as substance-use disorders and mental health issues.

Medical and geriatric parole is important not only for compassionate release, but also for the significant savings that could be realized by New Mexico taxpayers by not having the Corrections Department providing significant health care to individuals who no longer pose a risk to the community.

CONCERNS: From an ethical and accuracy perspective, the use of Risk Assessment Instruments (RAIs) in probation/parole decisions has the potential to amplify and perpetuate existing social inequalities.² Any data from RAIs should be used as a piece of information and not be the sole basis of decisions regarding the liberty of parolees, and should be analyzed for potential racial bias.

Additionally, although the bill requires probation and parole officers (PPOs) to seek guidance from a supervisor before incarcerating a technical violator, the system of incentives and graduated sanctions doesn’t prevent a PPO from seeking a full revocation for an individual’s first technical violation, nor does the bill prevent a court from fully revoking and imposing the balance of the sentence for a first technical violation. Furthermore, the bill allows PPO’s to arrest individual if he or she “has reason to believe that the parolee [probationer] poses a flight risk or a danger to the community” without any judicial review. The bill’s definition of standard violation could also lead to parolees and probationers facing revocation for traffic and other minor violations. Even though the bill fails to include a definition of absconding (a standard violation) that could help a probation or parole officer determine if an individual was actually trying to avoid supervision, it does require a probation or parole officer (PPO) to make a reasonable efforts to contact the probationer or parolee before moving forward with the violation.

<u>S</u>afer	<u>A</u>political	<u>F</u>iscally-Responsible	<u>E</u>vidence Based	Grade
New Mexico spends tens of millions of dollars annually to incarcerate individuals for technical violations, such as a failed drug tests or missing appointments. There is no evidence that incarcerating individuals who struggle with addiction improves public safety. That money would be better spent on behavioral health services, substance abuse programs, etc., that are more effective at reducing crime.	The current bill focuses on restitution and fee collection rather than retaining the original focus on reducing the number of people incarcerated for technical violations of probation. This reflects a sudden political shift away from evidence-based practices and back towards punishment, retribution and treating probation as fee collectors.	This bill could reduce the \$40 million spent annually housing parole violators and free up revenue that could be reinvested to address the root causes of crime. According to a 2016 analysis from the New Mexico Sentencing Commission, New Mexico prisons house 159 prisoners who are 65 years of age or older. Data from the Legislative Finance Committee (LFC) suggests that releasing prisoners who are 65 years of age or older could save the New Mexico Corrections Department's budget \$7.1 million.	<p>Research conclusively indicates that the likelihood of a person committing a crime decreases dramatically with age. Elderly prisoners are simply less likely to be dangerous should they be paroled.³</p> <p>Research has consistently shown that community-based drug abuse treatment can reduce drug use and drug-related criminal behavior.⁴</p> <p>A meta-analysis of 78 comparison-group community-based drug treatment studies found treatment to be up to 1.8 times better in reducing drug use than the usual alternatives.⁵</p>	C

1. New Mexico Legislative Finance Committee, Program Evaluation: Corrections Department (October 2018), Report 18-09.
2. The Sentencing Project, Report of the Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System (Aug. 2013), retrieved at: <http://sentencingproject.org/wp-content/uploads/2015/12/RaceandJustice-Shadow-Report-ICCPR.pdf>
3. Aging Prison Populations Drive Up Costs, Pew Charitable Trusts, 2018, retrieved at <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>
4. Lurigio AJ. Drug treatment availability and effectiveness—studies of the general and criminal justice populations. *Crim Justice Behav.* 2000;27(4):495–528
5. Prendergast ML, Podus D, Chang E, Urada D. The effectiveness of drug abuse treatment: a meta-analysis of comparison group studies. *Drug Alcohol Depend.* 2002;67(1):53–72.