

law.

An offender's right to serve on a jury is restored *either* (1) upon satisfaction of a deferred sentence, (2) upon completion of a full sentence imposed (including probation and parole), (3) by pardon or rights restoration under the laws of the jurisdiction under which the conviction was imposed, *or* (4) by certification of restoration of rights from the governor of New Mexico. Under current law, the right to serve on a jury could only be restored after an offender has completed their full sentence (including probation and parole).

An offender's right to hold public office is restored *either* (1) upon satisfaction of a deferred sentence, (2) by pardon or rights restoration under the laws of the jurisdiction under which the conviction was imposed, *or* (3) by certification of restoration of rights from the governor of New Mexico. Unlike the right to serve on a jury, the right to hold public office is not restored when a person completes their sentence along with any parole or probation. Under current law, the right to hold public office is only restored if a person completes their sentence *and* receives a pardon or certification of restoration of rights from the governor.

An offender's right to vote is restored *either* (1) upon release from imprisonment, (2) by pardon or rights restoration under the laws of the imprisoning state, *or* (3) by certification of restoration of rights from the governor of New Mexico. Under current law, the right to vote is only restored *either* (1) upon satisfaction of a deferred sentence, (2) upon completion of a full state or federal prison sentence and all terms of probation and parole, *or* (3) upon completion of a sentence and receipt of a pardon or certification of restoration of rights from the governor of New Mexico.

The bill further tasks the Corrections Department with updating the New Mexico Secretary of State regarding who is imprisoned and ineligible to vote and who has been released. The bill also requires correctional facilities in New Mexico to provide inmates preparing for release an opportunity to register to vote prior to release and clarifies that, even if registration information suggests a person is an incarcerated inmate, if they appear in person to vote or register, their eligibility to do so is presumed.

The amendment adds an effective date (applicable to all the bill's provisions) of July 1, 2021.

Synopsis of Original Bill

Senate Bill 114 repeals the existing statute governing the state's system of medical and geriatric parole (Section 31-21-25.1 NMSA 1978), in which the Parole Board is primarily responsible for determining whether an inmate is eligible for the program, and replaces with a new system of medical and geriatric parole that transfers much of this authority to the Corrections Department (NMCD).

The program of medical and geriatric parole established by SB114 applies to geriatric, permanently incapacitated, and terminally ill inmates, which the bill defines. Notably, the minimum age at which an inmate can be considered geriatric under the terms of this bill is 55, while the minimum age in current statute is 65 (age is not the sole qualifier for considering an inmate to be geriatric). Inmates who have not served their minimum sentence may be considered eligible for the program, but inmates convicted of first degree murder are not eligible. Medical and geriatric parole shall be in addition to any other parole for which a given inmate is eligible.

Under the provisions of this bill, eligible inmates (or their representatives) submit applications

for medical and geriatric parole to NMCD, and the department determines whether to recommend the applicant be granted parole under the medical and geriatric parole program. The bill requires NMCD consider the totality of circumstances when determining its recommendation, including an inmate's age, severity of illness, comprehensive health evaluation, institutional behavior, and current level of risk for violence, as well as any alternative to maintaining the inmate in a traditional setting. The department may request reasonable medical and mental health examinations be conducted to aid in making these decisions. All applications, regardless of NMCD's recommendation, must be processed and forwarded to the Parole Board.

The bill creates a rebuttable presumption that inmates who are geriatric, permanently incapacitated, or terminally ill do not constitute a danger to themselves or society and are therefore eligible for medical or geriatric parole, and requires the Parole Board to release inmates whom NMCD recommends for medical or geriatric parole absent clear and convincing evidence that the inmate's release is incompatible with the welfare of society. The board may consider the totality of the circumstances, including an inmate's criminal history, but is prohibited from denying medical or geriatric parole solely based on the nature of the charge resulting in the inmate's conviction or the inmate's criminal history.

The bill requires NMCD to make a recommendation to the board within 30 days of receipt of an inmate's application, and requires the board to schedule a hearing and render a decision as to the inmate's release within 15 days of receipt of NMCD's recommendation. In cases involving terminally ill inmates, NMCD must make a recommendation within 15 days, and the board must issue a decision within seven days. The department or board must document any justifications for failures to adhere to these timelines in writing.

Inmates who are not granted medical or geriatric parole may reapply if additional information is received or their condition warrants. Inmates who are denied medical or geriatric parole by the board may appeal the decision in district court. The bill requires the board to file the record on appeal with the district court (including any applicable appellee response) within 48 hours of a notice of appeal being filed, and the court must rule on the appeal within 72 hours of the record on appeal being filed.

The bill requires NMCD to promulgate rules and implement a medical and geriatric parole program (including the application form for medical or geriatric parole) pursuant to the provisions of the bill. The department must provide all inmates over 55 and all inmates in long term care or geriatric facilities with a copy of this policy once per year, and must identify geriatric, permanently incapacitated, and terminally ill inmates and notify those inmates of the opportunity to apply for medical or geriatric parole.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

This bill was endorsed by the Sentencing Commission (NMSC), which includes stakeholders from across the criminal justice system. Notably, the representative of the District Attorneys on the commission did not vote to endorse this bill, but NMCD's representative did.

FISCAL IMPLICATIONS

Medical and Geriatric Parole. A 2018 LFC program evaluation found in FY18 the Parole Board received 19 applications for medical parole and granted five, or 26 percent. Of the 19 applications, two were for inmates who were either discharged or dead. Overall, the board held 3,811 hearings; medical parole applications accounted for 0.5 percent of total activity. In 2008, the Pew Center on the States' Public Safety Performance Project identified the average cost of an older prisoner to be \$70 thousand per year. Accounting for medical inflation, the LFC evaluation estimated the state paid about \$1.1 million in FY18 for geriatric medical costs alone that could have been avoided.

This analysis estimates up to \$1.1 million could be saved each year under the provisions of this bill. Under the provisions of the HJC amendment, the bill would not take effect until July 1, 2021, so no fiscal impact is expected in FY21.

NMCD reports the average cost to incarcerate a single inmate in FY20 was \$44.8 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$23.3 thousand per inmate per year across all facilities.

The Administrative Office of the Courts (AOC) notes that the appeals process outlined in the bill would require expedited administrative appeal procedures, which will require the expenditure of clerical and judicial resources. However, due to the small number of cases NMCD anticipates would qualify for such appeals, AOC believes it is unlikely these appeals would result in a significant fiscal impact.

Similarly, the Public Defender Department (PDD) notes that its attorneys may occasionally be called upon to file an application or appeal on behalf of an incapacitated inmate. However, due to the small number of cases, PDD believes these costs could be absorbed by its operating budget.

Rights Restoration. Although analysis from NMCD regarding the HJC amendment was not available at the time of this report, in its analysis of another bill with similar provisions regarding providing the Secretary of State (SOS) with information in order to maintain current inmates' eligibility or ineligibility status and provide inmates with an opportunity to register or update their voter registration prior to release (House Bill 74), NMCD anticipated requiring \$200 thousand annually to cover costs for personnel, increased reporting, and other administrative functions to ensure compliance. The agency noted it would need to send reports to SOS more frequently; currently, it reports on inmate releases monthly to SOS, and, under these provisions, it would likely need to report daily. As a result, the anticipated reduction in operating budget impact of up to \$1.1 million anticipated under the provisions of the original bill is revised to up to \$900 thousand annually.

Similarly, in analyses for HB74, the Taxation and Revenue Department (TRD) estimated a cost of \$12.4 thousand in staff time to test and implement changes to its Tapestry system (the IT system used for MVD transactions) to include required information for inmate voter registration, while SOS did not anticipate any costs associated with implementing the requirements of that bill. It is assumed that similar costs (to TRD) or lack thereof (to SOS) would apply to the HJC amendment regarding rights restoration. This results in a \$12.4 thousand nonrecurring additional operating budget impact to TRD.

SIGNIFICANT ISSUES

NMSC notes that SB114 was developed by its Reform Committee, approved by that committee, and then approved by the full commission. The bill draft was developed in consultation with NMCD, which sits on both the full commission and the Reform Committee, and the Parole Board.

NMSC also notes that many states have statutes concerning early release of prisoners with medical issues, and notes that the National Conference of State Legislatures has developed [charts outlining these statutes](#).

PDD provided the following statement in support of the bill:

Incarcerating non-dangerous geriatric and seriously ill individuals does not further interests in public safety. This bill would place a public safety consideration front and center by excluding those convicted of first-degree murder and requiring non-dangerousness for release eligibility. It also gives both Corrections and the parole board the ability to consider public safety at each stage of review. Clarifying that the board *must* release non-dangerous inmates *unless* certain factors are met balances the crucial interests at stake.

Office of the Attorney General (N MAG) expresses concerns that the “rebuttable presumption that an inmate does not constitute a danger to the inmate’s self or to society and is therefore eligible for medical or geriatric parole” contained within Subsection G of Section 2 of SB114 is not limited to debilitated, infirm, or physically incapacitated inmates. N MAG notes that the presumption also applies to inmates over age 55 with undefined, age-related chronic illnesses and to inmates diagnosed with terminal illnesses, regardless of whether such inmates are debilitated, infirm, or incapacitated.

NMCD notes that it does not appear a formal hearing by the parole board is required in cases of terminally ill inmates. NMCD points out that the Victims of Crime Act requires the Parole Board notify the district attorney’s office in the jurisdiction where the conviction was secured of the hearing so that the office can notify any known victims of the hearing. NMCD expresses concern that an expedited process for terminally ill inmates that does not include a hearing could result in a victim not receiving proper notification or access to submit a statement or attend the hearing.

PDD provides the following analysis regarding the HJC amendment:

The HJC-amendment expands the current avenues for rights restoration in New Mexico. Perhaps the most significant change is tying voting rights, not to conviction, but to incarceration. This means that if a person receives a suspended sentence and does not go to prison, they never lose their right to vote. If incarceration is ordered, that person’s right is restored automatically upon release, rather than having to wait until they’ve completed a period of probation or parole. Finally, requiring prison facilities to assist with voter registration means that more people will be able to access and participate in the democratic process immediately upon their release.

This could reduce recidivism by increasing people’s sense of connection to their community during the reentry process. While successful reentry is largely conditioned upon access to employment, housing, and other services, a key ingredient lies in developing positive connections to institutions in the

community. Felony disenfranchisement operates contrary to the goals of ensuring public safety and reducing reoffending by alienating from society those individuals that the criminal justice system is simultaneously attempting to reintegrate. *See Democracy Imprisoned: The Prevalence and Impact of Felony Disenfranchisement Laws in the United States*, Report to the United Nations Human Rights Committee (September 2013), *retrieved at <https://www.sentencingproject.org/publications/democracy-imprisoned-a-review-of-the-prevalence-and-impact-of-felony-disenfranchisement-laws-in-the-united-states/>*.

In its analysis for a bill that included similar requirements for inmates to be provided with an opportunity to register to vote or update their voter registration prior to release (House Bill 74), NMCD noted that while incarcerated, an inmate's county of residence is the county where their designated facility is located, which is unlikely to be the same county where they will reside once released. The registration form may need to be resubmitted after the inmate's release.

RELATIONSHIP

SB114 relates to House Bill 58, which would amend the Probation and Parole Act to provide that an inmate sentenced to life imprisonment without parole would become eligible for parole after reaching age 60 and serving 10 or more years of their sentence, and that such parole would remain in effect for the rest of that inmate's life. The Probation and Parole Act currently provides that an inmate "sentenced to life without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life."

SB114 as amended relates to House Bill 74, which removes a felony conviction as a reason to cancel a certificate of voter registration.

SB114 relates to Senate Bill 141, which provides statewide procedures for imposing sanctions for technical violations of probation and parole conditions and requires escalating nonincarceration sanctions before incarceration.

TECHNICAL ISSUES

The Administrative Office of the District Attorneys notes it is unclear what agency, if any, will handle an appeal of the Parole Board's denial of appeal. This analysis assumes the board would handle such appeals (either via staff attorneys or contracted attorneys), but if that is not the intent, the intent should be clarified.

NMAG notes the following regarding the HJC amendment:

Newly created Section 31-13-6 provides that someone convicted of a felony is only ineligible to vote while imprisoned, and so under Subsection A their right to vote is restored when they are released from prison. Yet Subsections B and C provide that the right to vote is also restored when the person receives a pardon, restoration of rights, or certificate of restoration of rights. Subsections B and C arguably are superfluous, given that a person presumably would be released from prison before or upon receiving a pardon, restoration of rights, or certificate of restoration of rights, and thus his or her rights would be restored under Subsection

A.

Regarding the HJC amendment, PDD notes that the preamble language of Section 6 appears to omit the phrase “may be restored by” before listing subsections A through D.

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