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## FISCAL IMPACT REPORT

<b>SPONSOR</b>	Sen. Jaramillo/Reps. Chavez, N. and Romero, A.	<b>LAST UPDATED</b>	2/13/2025
		<b>ORIGINAL DATE</b>	2/5/2025
<b>SHORT TITLE</b>	Parole & Parole Board Changes	<b>BILL NUMBER</b>	Senate Bill 17/aSHPAC/aSJC
		<b>ANALYST</b>	Valdez

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

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMPD	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund
Total	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal		

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Law Office of the Public Defender (LOPD)  
 New Mexico Sentencing Commission (NMSC)  
 Crime Victims Reparation Commission (CVRC)  
 New Mexico Parole Board (NMPD)

#### Agency Analysis was Solicited but Not Received From

New Mexico Attorney General (NMAG)

## SUMMARY

### Synopsis of SJC Amendment to Senate Bill 17

The Senate Judiciary Committee amendment to Senate Bill 17 (SB17) strikes the language concerning removal of a parole board member that provided the member with a hearing before removal and assigned original jurisdiction to the state Supreme Court. It inserts language requiring “reasonable notice and a public hearing” unless the right to the hearing is waived.

### Synopsis of SHPAC Amendment to Senate Bill 17

The Senate Health and Public Affairs Committee amendment to Senate Bill 17 (SB17) clarifies the per diem and mileage for nonsalaried public officers would include “reimbursable activity under the act” (Per Diem and Mileage Act) with scheduled board meetings and hearings as eligible for per diem and mileage.

## **Synopsis of Original Bill**

Senate Bill 17 (SB17) amends Section 31-21-10 on parole authority and procedure in several ways. In Section 1, the bill adds language to Subsection A indicating that serving a 30-year sentence, “shall be construed as the retributive portion of the life sentence.” Next, the bill adds language that the parole board should consider risk and readiness as demonstrated by rule compliance in prison, education or vocational training, maturity, rehabilitation, and “a fitness to reenter society” in parole decisions. Further, SB17 requires that the parole board: hear from family or representatives of the victims (if the family or representative chooses), consider mitigating and aggravating circumstances of the offense, and consider the inmate’s criminal history, before ordering the parole of an inmate sentenced to life imprisonment.

Section 2 amends Section 31-21-24 of the Parole Board Act to change the citation from “Section 1 through 5 of this act” to “Sections 31-21-22 through 31-22-26 NMSA 1978.

Section 3 changes the criteria required to remove a member from the parole board. The law currently states the governor may remove a member “as provided in Article 5, Section 5, of the Constitution of New Mexico.” Instead, SB17 would change the language to allow removal “only for incompetence, neglect of duty, or malfeasance in office.” The bill would require that removal follow a proceeding commenced by the board or the governor. Additionally, the law adds that the state Supreme Court has original jurisdiction over removal of board members, and the member may also be removed by impeachment pursuant to Article IV, Section 36, of the Constitution of New Mexico.

In Section 4, SB17 adds Section 31-21-25.2, “Conscientious Scheduling of Hearing in Cases of Homicide,” requiring that the parole board not schedule hearings on the birthday or death anniversary of a homicide victim, “when practicable.”

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## **FISCAL IMPLICATIONS**

Much of the substantive change proposed by SB17 is procedural and will not carry significant fiscal implications. The New Mexico Parole Board (NMPD) may be impacted by any hearing in which they participate stemming from changes required by SB17. NMPD may incur the cost of processes related to the hearing and representation in front of the Supreme Court if needed.

## **SIGNIFICANT ISSUES**

The Administrative Office of Courts (AOC) states that codifying the criteria for parole of those who have served life sentences improves transparency. AOC also argues that requiring input from the victim’s family may be consistent with the rights of crime victims detailed in the New Mexico Constitution, Article II, Section 24.

Regarding the amended removal process for board members, AOC states:

Parole board members serve staggered six-year terms. SB17 removes the current provision that only refers to the governor's authority in NM Constitution, Article V, Section 5, to remove "any officer appointed by him unless otherwise provided by law." The process set forth in SB17 appears intended to exercise the Legislature's authority to provide a process for removal "by law." This appears to be an authorized exercise of legislative power. See e.g. *State ex rel. NM Judicial Standards Commission v. Espinosa*, 2003- NMSC-017, para. 29, upholding the governor's authority under Section V, Paragraph 5, to remove commissioners in the absence of limiting legislation; "Similarly, for many executive boards the Legislature has exercised its authority to expressly limit the governor's removal power. It has done so by specifying the reasons for which an appointee can be removed, or by requiring notice and a hearing prior to removal. As one of many examples, members of the lottery authority "may be removed by the governor for malfeasance, misfeasance or willful neglect after reasonable notice and a public hearing unless the notice and hearing are expressly waived in writing by the member." NMSA 1978, § 6-24-5 (1995). For some entities the Legislature has required the consent of two-thirds of the Senate. See Section 52-9-5 NMSA 1978 (employers mutual company board of directors); Section 58-29-5 NMSA 1978 (2001) (small business investment corporation). By imposing a similar limit on the governor's removal power, the Legislature could prevent future governors from making wholesale changes to the commission while at the same time allowing for removal for cause.

The Senate Judiciary Committee amendment addresses AOC's additional concerns over the questionable right of the Legislature to assign original jurisdiction for a board member's removal to the state Supreme Court and a lack of clarity over whether the Supreme Court was expected to take the highly unusual step of holding an evidentiary hearing.

Similarly, the SJC amendment removes language on board member impeachment questioned by the Administrative Office of District Attorneys (AODA), although the bill as amended still contains language providing a member can "only" be removed for incompetence, neglect of duty, or malfeasance in office. The word "only" creates the presumption for AODA that the intent of the bill is to "usurp the governor's power to remove the board members under Article V, Subsection 5. They note that in *Denish v. Johnson*, 1996-NMSC-005, paragraph 53, 121 NM 280, a similar provision made the governor's removal of a member of the Board of Regents of New Mexico Tech illegal. This limit on executive power is consistent with the proposal in SB17.

However, the SJC amendment also strikes language granting the governor and the parole board the authority to commence a removal hearing, leaving it unclear how a removal would be initiated and what entity would hold the public hearing.

The New Mexico Sentencing Commission (NMSC) notes variation in the processes of parole boards across the states:

Discretionary parole for those serving life sentences is available in most states (47, including Washington, DC, as of 2017), but the process varies widely from state to state. New Mexico is considered one of 11 states that "continue to retain parole boards to determine discretionary or mandatory release but have curtailed these processes for those sentenced for certain offenses or replaced indeterminate sentences with mandatory terms or truth-in-sentencing laws" (p. 27). See Kokkalera & Allison, "The (not so) United

States of Parole: A State-of-the-Art Review of Discretionary Release for Individuals Serving Life”, *Journal of Criminal Justice and Law* (2024) (available at: <https://jcjl.pubpub.org/pub/parol-in-the-united-states-state-of-the-art/release/1>).”

## **OTHER SUBSTANTIVE ISSUES**

The New Mexico Crime Victims Reparation Commission notes that permitting virtual participation in parole hearing by members and representatives of victims’ families would be emotionally comforting and protect anonymity. Virtual participation would also prevent contact between the family and representatives of the victim and supporters of the offender. These factors would encourage participation in the process.

JV/hg/sgs