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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/13/13  
 SPONSOR O'Neill LAST UPDATED 02/26/13 HB \_\_\_\_\_  
 SHORT TITLE No Mandatory Parole for Certain Sentences SB 415/aSPAC  
 ANALYST Chenier

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

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$63.8	\$63.8	\$127.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB438 No Mandatory Parole for Certain Sentences

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)  
 Adult Parole Board (APB)  
 Attorney General's Office (AGO)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of SPAC Amendment

The Senate Public Affairs Committee amendment keeps the original requirement in Section 31-19-1 NMSA 1978 that defendants convicted of misdemeanors be sentenced to county jail. The amendment also changes originally proposed language by requiring inmates convicted of first, second, and third degree felonies or who have been ordered to serve a period of parole by the court to serve a two-year period of parole.

#### Synopsis of Original Bill

Senate Bill 415 proposes to amend Section 31-19-1 NMSA 1978 by removing the requirement that a person convicted of a misdemeanor be imprisoned "in the county jail". This change may lead to inmates convicted of misdemeanor to be imprisoned at NMCD prisons, alternative facilities such as drug or alcohol rehabilitation facilities, or house arrest. This bill increases judicial discretion by allowing judges to sentence defendants convicted of misdemeanors to

prison. Currently judges already have the discretion to sentence defendants convicted of felonies who have less than 365 days left on their sentence, after suspensions and presentence credits are applied, to either prison or a county detention facility.

The bill adds that parole shall only be imposed if the conviction was a felony and the inmate was sentenced to more than one year in prison, unless the parties to a proceeding agree that a period of parole should be imposed. If the parties to a proceeding agree that parole should be imposed on an individual that was not convicted of a felony, and was sentenced to one year or less imprisonment, there is no longer the requirement that the individual undergo a two year parole term. Inmates ordered to serve a period of parole by the court have to serve one year of parole. The bill adds that inmates convicted of misdemeanor or petty misdemeanors serving a sentence in an institution designated by the NMCD are not subject to a period of parole.

Last, Senate Bill 415 requires the APB to apprise an inmate “in person” of the conditions of parole and the inmate’s duties. Current statute requires that the APB “personally” apprise the inmate of the conditions of parole and the inmate’s duties.

## **FISCAL IMPLICATIONS**

The APB provided the following:

The proposed bill would require board members to attend in person. Current AGO opinion dating back to 2005 states that, when the parole board transitioned to video hearings the terminology “personally” would serve to allow for video conference hearings which are a cost effective way of conducting board hearings. However changing Section 31-21-10 NMSA 1978 to the more specific terminology of “in person” would require two board members to travel to all 17 prison facilities throughout the entire state which would nearly triple the Adult Parole Board current operating budget. Members are professional volunteers and reimbursed mileage and per diem. For example current expenditure for the Hobbs prison facility is \$425.00 but with two members present instead of one in person and one by video the expenditure would be \$951.00 per month.

## **SIGNIFICANT ISSUES**

The AGO provided the following:

Section 29-11A-2 NMSA 1978, Sex Offender Registration, section A states: “The legislature finds that sex offenders pose a significant risk of recidivism:” However, this bill could permit some sex offenders to avoid parole terms completely. This would hamper law enforcement in holding sex offenders accountable when they are found by a court to have violated the terms of their probation. For example, a 4th degree or 3rd degree sex offender could violate probation and be sentenced to prison for the remainder of the basic term, but with this bill there would be no parole upon release.

The NMCD stated the following:

The amendments continue to eliminate a parole term for felony offenders who are sentenced to a period of NMCD imprisonment of one year or less. This result could

endanger public safety. For example, if a felony offender on probation for a first or second degree felony violates his probation in a substantial manner (assaults a citizen, is caught selling drugs, etc.) and is sent to prison with one year or less left on his sentence, he would not have a parole term attached (except in the unlikely event that he agreed to one). Public safety would be better served by having these offenders serve a parole term, as it would give NMCD the opportunity to supervise and address these offenders' problems (through anger management classes, substance counseling, etc.) before those offenders are fully discharged from custody. Offenders who violate their probation conditions near the end of their sentence and are then sent to prison are the very offenders who are most likely to need the scrutiny and supervision provided by a parole term.

## **TECHNICAL ISSUES**

The NMSC provided the following:

This bill would eliminate parole terms for all felony offenders, regardless of degree of felony, who are sentenced to a period of imprisonment of less than one year, unless the parties agree that a parole term is imposed. The bill does not clearly specify how the "period of imprisonment" is determined. If the period of imprisonment is defined as the amount of sentence left to serve after suspensions and presentence credits are applied, this bill could result in situations where a defendant is convicted of a third or second degree felony and due to a large suspension and/or a large number of presentence credits the defendant has less than one year to serve and consequently would not have a parole term. The same would be true of defendants who are revoked on a probation violation and have large presentence credits and have less than one year to serve.

## **DUPLICATION**

This bill duplicates House Bill 438

EC/blm