



Duplicates/Conflicts with/Companion to/Relates to: SB17

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

SB375 makes changes to the earning and loss of meritorious deductions by incarcerated persons and the manner of serving and duration of parole after release from confinement.

Section 1 amends existing statutory section 31-18-15C to remove as a condition of parole imposed by the parole board that the person pay the costs of parole services and reimburse a law enforcement agency or local crime stopper program as is required by section 31-21-10G(1) and (2). In Section 3 SB375 removes those payment provisions of section 31-21-10G(1) and (2).

Section 2 in addition to revisions that use gender neutral language in the statute, adds a new section C to section 31-20-5 that requires a person shall be automatically released from probation if the person is classified as a minimum level risk by a validated scoring instrument, has met all of the obligations of probation and completed one-half or more of the period of probation.

Section 4 makes substantial revisions to section 33-2-4, the statute governing Earned Meritorious Deductions (EMD) which are reductions on the sentence term based on certain conduct.

A and B clarify that a defendant may lose EMD for failing to “actively participate in programs recommended for the prisoner by the classification supervisor and approved by the warden” and require that EMD “shall be awarded” once the defendant is placed in a correctional facility.

C provides 4 days EMD per month for a defendant with a serious violent offense conviction, replacing the current standard of “up to a maximum of four days” while providing 30 days EMD for a defendant with a conviction for a nonviolent offense instead of “up to a maximum of 30 days.” Also, for a defendant incarcerated for revocation of parole, eliminates the ability to earn EMD, replacing the current provisions that permit the defendant to earn between 4 and 30 days EMD per month.

D and E allow a defendant, upon approval by the warden, to lose EMD for failure to actively participate in approved programs. Also, the defendant will not lose EMD if failure to actively participate is caused by a lockdown and may continue to earn EMD unless the warden determines the prisoner's conduct contributed to the initiation or continuance of the lockdown

F and G renumber provisions reordered by the new material and clarify terms such as “month” and “three months” with a number of days, such as 30 or 90 days.

H replaces “is not eligible to earn” EMD with “may lose” EMD for various acts of misconduct.

I and J are renumbered and replaces reporting of EMD earned by the defendant with a report “upon initial award, if additional awards are given, if meritorious deductions are lost and upon request.”

K, L, M and N are only renumbered due to the new material.

Q adds to a paroled defendant's ability to earn EMD while on parole eligibility to earn EMD “while on parole in the community commensurate with the classification of the offense.”

## FISCAL IMPLICATIONS

SB375 is likely to have a fiscal impact on the Department of Corrections.

## SIGNIFICANT ISSUES

### Elimination of Parole Fees

Sections 1 and 3 of SB375 eliminate the requirement to pay the “actual costs” of parole supervision up to \$1800 per year as set in section 31-18-15 and eliminate the requirement to reimburse police or other programs for rewards paid to help arrest, prosecute, or convict the defendant.

The merits of a requirement that a person on parole pay for parole supervision has been much debated.

“Advocates of supervision and program fees say that they are a fair and reasonable consequence of being on probation or parole. The individuals committed the crime, so it is fitting that they (rather than the tax payers) bear the financial burden of their supervision. Others believe supervision to be a privilege compared to incarceration; a privilege that should be paid for by the supervised individuals. Finally, there is also a belief that supervision fees encourage individuals on probation and parole to be more invested in their own success because they are paying for it. . .

Critics assert that the costs of collecting fees may be greater than the actual revenue collected. Moreover, any revocations from failure to pay would result in the greater costs associated with incarceration and court appearances. More critical opponents claim that this budgetary reliance on fee collection is an unjust system of profiteering on the backs of the disproportionately impoverished people under supervision. . . [P]roponents of collection note the concept of "buying into a system," where the act of paying for supervision forces probationers to be more invested in their rehabilitation. Critics argue that the imposition of fees is yet another barrier and obstacle, thus setting probationers and parolees up for failure.

Ebony Ruhland, *The Impact of Fees and Fines for Individuals on Probation and Parole*, Robina Institute of Criminal Law and Criminal Justice, University of Minnesota, (May 23, 2016) found at: <https://robinainstitute.umn.edu/articles/impact-fees-and-fines-individuals-probation-and-parole>

In New Mexico, an undated presentation to the Legislature by Daniel Barela for the Department of Corrections reported that annual collection of probation fees totaled \$377,258.48 (found at: <https://www.nmlegis.gov/handouts/CJRS%20071818%20Item%205%20Parole%20Costs%20Assessed%20to%20Criminal%20Defendants%202.pdf>). The Department’ FY25 appropriations are almost \$320 million, making collection of parole fees about 0.1% of total revenue.

As of the end of 2021, 37 states have laws allowing parole supervision fees with 33 states charging a monthly supervision fee and four states charging a flat fee. Only 10 states did not authorize parole supervision fees. Also, 30 states allowed for parole revocation and/or extension

if fees are not paid, including New Mexico. *50 State Survey: Probation & Parole Fees, Fines and Fees* Justice Center Reform Alliance, (May 2022), p.8, found at: <https://finesandfeesjusticecenter.org/content/uploads/2022/05/Probation-and-Parole-Fees-Survey-Final-2022-.pdf>. Although revoking parole for failure to pay fees, as can occur in New Mexico, is common, it is unconstitutional to incarcerate a person for being poor. *Bearden v. Georgia*, 461 U.S. 660 at 660-1 (1983) (“If the probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay, the State is justified in using imprisonment as a sanction to enforce collection. But if the probationer has made all reasonable bona fide efforts to pay the fine and yet cannot do so through no fault of his own, it is fundamentally unfair to revoke probation automatically without considering whether adequate alternative methods of punishing the probationer are available to meet the state’s interest in punishment and deterrence.”).

Criticism of the practice of revoking parole for failure to pay supervision fees recently led Maryland to eliminate probation fees, after which the governor cancelled accumulated debt of more than \$13 million owed by defendants for parole fees and drug testing fees.

Governor Wes Moore today announced that the Department of Public Safety and Correctional Services will cancel the debt for outstanding mandatory, parole, and administrative release supervision fees and drug testing fees for individuals who are currently under the supervision of the agency's Division of Parole and Probation. The action will relieve administrative debt for 6,715 parole, mandatory, and administrative cases, totaling more than \$13 million.

“Marylanders who serve their time deserve a second chance without bearing the financial burden of recurring administrative fees,” said Gov. Moore. “Leave no one behind is not just a talking point for us, it's a governing philosophy. This action will create paths to work, wages, and wealth for Marylanders; grow our economy; and build a state that is more equitable and just.”

The Department of Public Safety and Correctional Services Division of Parole and Probation collects supervision fees from individuals who are under mandatory release, parole, administrative release, or under probation supervision when ordered by the court. The supervision fee is currently \$50 per month for individuals who were placed on supervision on or after June 1, 2011, and \$40 per month for individuals who were placed on supervision before June 1, 2011.

[House Bill 0531](#), which took effect October 1, repealed the Maryland Parole Commission's authority to assess supervision fees against an individual under supervision. The legislation also repealed the commission's authorization to require an individual who is on parole, mandatory, or administrative release supervision to pay for drug and alcohol testing fees under some circumstances.

“Even the most motivated people coming home from prison have trouble getting a job, whether because of the scarlet letter of their criminal record, struggles with substance abuse or just managing that difficult transition to life back in the real world. By waiving supervision fees, which disproportionately impact low-income communities and people of color, Governor Moore and the General Assembly are easing financial burdens on Marylanders trying to get their lives back on track,” said Attorney General Anthony G.

Brown. "These changes will also lower the risk of recidivism and help advance our shared goal of eliminating mass incarceration."

The total amount of supervision and testing fees ordered is \$14,338,345.23. From the total, \$998,455.23 has been collected by the Division of Parole and Probation. The balance of \$13,360,087.56 in supervision and testing fees is subject to the department's debt cancellation action.

"The decision to waive parole and drug testing fees aligns with Governor Moore's vision for a more supportive reintegration process," said Maryland Department of Public Safety and Correctional Services Secretary Carolyn Scruggs. "This decision eases financial burden, promotes successful reintegration, and will ultimately help reduce recidivism among returning citizens."

Governor Moore Announces Debt Cancellation for Mandatory, Parole and Administrative Release Supervision and Drug Testing Fees, Office of Governor Wes Moore Press Release (October 4, 2024), found at:

<https://governor.maryland.gov/news/press/pages/governor-moore-announces-debt-cancellation-for-mandatory-parole-and-administrative-release-supervision-and-drug-testing-fee.aspx>

SB375 appears to invite consideration of the basis for Maryland's legislation and Governor Moore's action in light of the impact of parole fees on state revenue and the objectives of the Corrections Department in collecting such fees.

### **Changes to Earned Meritorious Deductions and Early Release from Probation**

The changes to EMD proposed in SB375 provide more clarity such as defining periods in terms of days instead of terms such as "six month" and how EMD is earned by a defendant who "actively participates" in programs during incarceration. Two significant substantive changes include the elimination from the ability to earn EMD for a person who returns to incarceration due to violation of parole and early release from probation for those who have been fully compliant for at least one-half of the parole term and who are classified as having "a minimum level risk by a validated scoring instrument."

The latter provision (Section 2) would benefit from defining what risk is to be evaluated (reoffending, failing to comply with parole terms, etc.) and also what constitutes a "validated scoring instrument." For general EMD data, the New Mexico Sentencing Commission published in March 2023 an extensive report on existing EMD provisions and defendants' relative success or failure, found at: <https://nmsc.unm.edu/reports/2024/time-served-in-new-mexico-prisons-fy-2023-analysis-of-the-impact-of-earned-meritorious-deductions.pdf>.

Data on the impact of longer or shorter terms of supervision of defendants may support efforts to reduce the terms of supervision. A data-driven study of probation (not parole) by Pew of data from Oregon and South Carolina found that, among those who were on probation for a year without being arrested, "more than 90% could have spent less time on supervision without an impact on recidivism (as measured by re-arrests). Had these individuals served the shortest supervision terms needed to minimize re-offending, the average probation length in South

Carolina would have been shortened from 26 to 18 months and in Oregon from 24 to 14 months, without an associated increase in arrests. These reductions would have cut the two states' average daily populations (ADPs) on supervision by 32% and 44%, respectively, with the declines driven largely by people whose probation terms could be reduced by two or more years.” *States Can Shorten Probation and Protect Public Safety*, April 15, 2021, found at: <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/12/states-can-shorten-probation-and-protect-public-safety>.

A study of the length of parole terms relative to the risk of recidivism using Georgia data concluded that “[u]sing the likelihood of returning to prison in three years after release as a proxy for reoffending, my results offer no evidence that time on parole—defined as the difference between actual sentence length and time served in prison—has statistically significant effect on recidivism.” *The Effects of Time in Prison and Time on Parole on Recidivism*, Mariyana Zapryanova, April 14, 2020 at p.3 found at: [https://mzapryanova.github.io/web/zapryanova\\_recidivism.pdf](https://mzapryanova.github.io/web/zapryanova_recidivism.pdf).

These studies may provide some support for the proposals in SB375 that provide incentives for defendants to earn additional reductions in parole time for compliance with parole terms.

## **PERFORMANCE IMPLICATIONS**

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

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

## **AMENDMENTS**