

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Date Prepared: 2/13/2025

Check all that apply:

Bill Number: SB375

Original X Correction
Amendment Substitute

Sponsor: Sen. Antonio Maestas

Agency Name and Code Number: 305 - New Mexico Department of Justice

Short Title: PROBATION & PAROLE CHANGES

Person Writing Analysis: Sarah Karni
Phone: 505-537-7676
Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Table with columns: Appropriation (FY25, FY26), Recurring or Nonrecurring, Fund Affected

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Table with columns: Estimated Revenue (FY25, FY26, FY27), Recurring or Nonrecurring, Fund Affected

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurr ing	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis: (self-described) “Relating to probation; removing the payment of the cost of parole services; allowing a minimum risk defendant to be released from probation in certain circumstances; clarifying projected release dates for meritorious deductions upon admission to a correctional facility.”

The bill proposes to amend Sections 31-18-15, 31-20-5, 31-21-10, and 33-2-34 NMSA 1978 to provide various new leniencies to parolees and probationers.

SECTION 1

Deleted material in Section 31-18-15(C) would release parolees from paying the costs of parole services and reimbursement to law enforcement or crime stopper agencies as currently required.

SECTION 2

Section 31-20-5(B)(2) substitutes the phrase “the defendant” for the word “him.”

Added material to Section 31-20-5 provides automatic release from probation of any defendants who meets the following three criteria: (1) is classified as a minimum level risk by a validated scoring instrument; (2) has met all of the obligations of the defendant's probation; and (3) has completed one-half or more of the period of probation.

SECTION 3

Section 31-21-10(G) is deleted. The deleted subsection specifies details about parolees’ financial obligations currently required by Section 31-18-15.

SECTION 4

Section 33-2-34(A) changes the language that requires that a prisoner ‘must be an active participant’ in recommended programming to earn meritorious deductions (EMD) to read that a prisoner “may lose [EMD] if they fail to actively participate” in recommended/approved programs.

Section 4(B) allows that “Meritorious deductions shall be awarded for the remainder of the sentence, after pre-sentence confinement has been deducted, upon admission to a correctional facility designated by the corrections department.”

Section 4(C)(1) and (2) both remove an insignificant linguistic redundancy but also remove the requirement that goodtime earned must be for “time served,” which relates to amendments below.

Section 4(C)(3) removes language about particular variations of parole revocation, and simplifies the section to preclude EMD, generally, for parole revocation.

Section 4(D) and (E) echo the change in Section (A) by shifting the existing presumption of the potential to earn EMD to a presumption that EMD will be earned, and they can only be lost by failure to participate and by recommendation by NMCD, and in the case of lockdown they will not lose EMD.

Section 4(F)(1-5) substitute monthly calculations with equivalent numbers of days, *e.g.*, “three months” is substituted with “ninety days.”

Section 4(H) again echoes the changes above to shift the existing presumption of the potential to earn EMD to a presumption that EMD will be earned, and they can only be lost by disciplinary infractions and the like.

Section 4(J) changes when a prisoner gets a summary of the rules and when they receive a statement of the meritorious deductions earned from being quarterly to “upon initial award, if additional awards are given, if meritorious deductions are lost and upon request.”

Section 4(O) adds that an “offender shall be eligible to earn meritorious deductions while on parole in the community commensurate with the classification of the offense.”

FISCAL IMPLICATIONS

None to NMDOJ.

SIGNIFICANT ISSUES

The change to §31-18-15(C) would shift the financial burden of parole-related costs to the State/NMCD.

The changes in Section 33-2-34 conflict with current NMCD policy and New Mexico case law that make EMD discretionary.

Additionally, the proposed amendments appear to conflate the difference between “eligibility” to earn EMD and the “forfeiture” of EMD which have already been earned. For example, in the proposed language change to Section 33-2-34(A), that a prisoner “may *lose* [EMD] if they fail to actively participate” seems to indicate that a prisoner would forfeit EMD already earned. The current language comports with the practice (as well as NMCD policy and case law) that makes prisoners *eligible* to earn EMD when they actively participate in approved/recommended programming. *See generally Miller v. Tafoya*, 2003-NMSC-025, 134 N.M. 335. (Explaining that “Termination” refers to the act of suspending an inmate’s *eligibility to earn* EMD. The term “forfeiture” is used to refer to *accrued* EMD, those “good time credits” which an inmate has

already earned. The term “divestiture” is also used when describing forfeiture.) This conflation would create confusion in light of existing case law that distinguishes the liberty interest in accrued EMD and the absence thereof in the mere eligibility to earn good time. *See, e.g., Brooks v. Shanks*, 1994-NMSC-113, ¶ 10

[T]he language in Subsection 33-2-34(C) and in Section 33-2-36 ... gave Brooks the right not to be subjected to a forfeiture or termination of his good-time credits *unless the appropriate procedures were followed. If those procedures, which included obtaining the IRC's recommendation and the warden's approval, were circumvented, a due process violation occurred.* See *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974).

The changes would additionally create conflict and confusion relative to NMCD policy which has different grievance paths for loss of eligibility (a classification decision) vs. forfeiture.

NMCD Policy CD-080102(P)(1) (a, b) states in pertinent part:

1. An inmate who disagrees with an institutional classification decision has the right to appeal the action through established channels. The inmate may appeal the decision to the facility warden and the warden’s decision will be the final authority. The warden will assign a staff member to serve as the institutional classification appeals officer.

a. A classification decision made by the Classification Supervisor, Unit Manager, or Program Manager through the Supervisory Review process or Classification Committee is subject to appeal. Classification issues which may be appealed to the Warden include, but are not limited to: decisions involving custody classification; work or education program assignments; inter/intra-state facility transfers; family visits and good time decisions (except forfeiture and lump sum award of good time which are not subject to appeal);

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP:

Relates to SB 17, which amends factors to be considered by the parole board when considering parole of an inmate sentenced to life imprisonment.

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL:

Status quo.

AMENDMENTS

N/A