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FISCAL IMPACT REPORT

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|-------------|----------------------------|---------------|-------------|
| SPONSOR | Maestas | LAST UPDATED | 3/21/2025 |
| | | ORIGINAL DATE | 2/12/2025 |
| SHORT TITLE | Probation & Parole Changes | BILL | Senate Bill |
| | | NUMBER | 375/aHJC |
| | | ANALYST | Valdez |

REVENUE* (dollars in thousands)

| Type | FY25 | FY26 | FY27 | FY28 | FY29 | Recurring or Nonrecurring | Fund Affected |
|------|------|--------------------------------|--------------------------------|--------------------------------|--------------------------------|---------------------------|---|
| Fee | | Indeterminate but minimal loss | Indeterminate but minimal loss | Indeterminate but minimal loss | Indeterminate but minimal loss | Recurring | Corrections Department Intensive Supervision Fund |

Parentheses () indicate revenue decreases.

*Amounts reflect most recent analysis of this legislation.

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

| Agency/Program | FY25 | FY26 | FY27 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|----------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------------------|---------------|
| NMCD | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Recurring | General Fund |
| NMPB | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Indeterminate but minimal | Recurring | General Fund |

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 102 and Senate Bill 375

Sources of Information

LFC Files

Agency Analysis Received From

Administrative Office of the Courts (AOC)
Law Offices of the Public Defender (LOPD)
New Mexico Attorney General (NMAG)
New Mexico Sentencing Commission (NMSC)
New Mexico Parole Board (NMPB)
New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of HJC Amendment to Senate Bill 375

The House Judiciary Committee amendment to Senate Bill 375 (SB375) amends the language detailing the awarding of meritorious deductions for prisoners confined after a revocation of their

parole status. The introduced version of the bill would have removed entirely meritorious deduction awards for those confined after the revocation of parole. The HJC amendment would make it so those confined after revocation of parole would still be eligible for meritorious deductions, which would be awarded at a level appropriate for the classification of their offense.

Synopsis of Senate Bill 375

Senate Bill 375 (SB375) amends several sections of New Mexico law related to probation and parole. The bill would: remove the requirement that offenders pay for parole services; allow low risk offenders to be released from probation if they meet certain conditions; and clarify procedures around meritorious deductions.

Section 1 of SB375 amends Section 31-18-15(C) NMSA 1978 to remove the section requiring those that have completed their sentence of imprisonment to, as a condition of their parole, to pay the costs of parole services, and to reimburse law enforcement or a local crime stopper agency consistent with Section 31-21-10 NMSA 1978. Section 3 of the bill removes Section 31-21-10(G) NMSA 1978, which details the amounts and limits of the payments required for a person on parole to be discharged. The removed section reiterates that offenders must reimburse law enforcement or a local crime stopper agency.

Section 2 of SB375 amends Section 31-20-5 NMSA 1978 by adding a Subsection C, providing that minimum-level risk defendants (according to a validated scoring instrument), should be released automatically if they have met the obligations of their probation, and completed half or more of the period of probation.

Section 4 of SB375 amends Section 33-2-34 NMSA 1978 to clarify the procedures and language regarding meritorious deductions. The bill would alter the language in Subsection A to make clear a prisoner may lose earned meritorious deductions if they do not participate in recommended programs. This change is also made in the bill's new Subsection D and Subsection H. SB375 would add a new Subsection B to require that meritorious deductions be awarded upon admission, after pre-sentence confinement has been deducted. Subsection C (Subsection B in current law) of SB375 would remove the language setting a maximum number of days of meritorious deductions that prisoners can earn in a month, for both nonviolent and serious violent offenders. In addition, Subsection C removes qualifying language so that any parole revocation would preclude future meritorious deduction awards for that offender. Subsection E of the bill (Subsection C in current law) is amended so that a prisoner may not lose meritorious deductions because of a facility lockdown, unless they were the cause of the lockdown. Under the current law, they do not lose what they have earned, and they may also continue to accumulate meritorious deductions during lockdown. In Subsection J (Subsection H under current law), current law is amended to require statement of meritorious deductions upon initial award, loss of meritorious deductions, and upon request. This is a change from current law which requires these statements quarterly. Subsection O (Subsection M under current law) adds a sentence to clarify that offenders on parole in the community may still earn meritorious deductions "commensurate with the classification of the offense." Finally, the bill includes changes to the numbering scheme and references as necessary.

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

Sections 1 and 3 of SB375 eliminate the requirement to pay the “actual costs” of parole supervision up to \$1,800 per year as set in Section 31-18-15 NMSA 1978 and eliminate the requirement to reimburse police or other programs for rewards paid to help arrest, prosecute, or convict the defendant.

Fee Elimination. In FY18, the most recent year for which data is available, New Mexico collected \$377 thousand in parole costs fees from offenders. Given that FY25 revenues were near \$320 million, the collected fees make up only a small fraction of New Mexico Corrections Department (NMCD) revenues. In addition, while New Mexico caps both parole and probation supervision fees at \$1,800 and delimits monthly payments between \$25 and \$150, the evidence presented by a 2023 study suggests this could have adverse effects on the state’s recidivism rate. In the study, the effects on recidivism were most pronounced on Black defendants, especially those with prior felony convictions, and those unable to post bail. The evidence suggests that those with the highest risk for recidivism are the most likely to be affected by fees. AOC highlights the actions of Maryland, which eliminated probation fees in 2024, noting the positive benefits of decreasing recidivism and helping to reduce mass incarceration. AOC also notes the costs of collecting fees may be greater than the revenue collected. This observation is supported by data from New Mexico showing fees levied far exceed those collected, suggesting resources would have to be expended to increase the proportion of fees levied that are paid by offenders.

SIGNIFICANT ISSUES

NMCD notes that the removal of parole fines improves relationships between parolees and parole officers. This improvement leads to more effective engagement with rehabilitation and community reintegration programming, which in turn improves outcomes among parolees. This is consistent with a recent LFC evaluation which cited literature showing an association between fees and recidivism.

Early Release from Probation. The Administrative Office of the Courts (AOC) points to national studies on the effects of shorter terms of supervision, one of the aims of SB375. Specifically, AOC finds:

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 6 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.

Similarly, the Law Offices of the Public Defender (LOPD) argues that early discharge for those successfully navigating supervision would incentivize compliance with probation conditions. This compliance would be most pronounced early in supervision terms when many offenders struggle. In addition, it would allow resources to be dedicated to higher risk offenders who require more support.

Expanding Meritorious Deductions. LOPD notes that as with early discharge for those successfully navigating supervision, expanding meritorious deductions would incentivize good behavior and participation in rehabilitative programming aimed at reducing recidivism and reintegrating people into their communities. LOPD also notes a potential complication with eliminating meritorious deductions following revocation:

It is unclear why the bill would eliminate the already minimal meritorious deductions currently available following revocation but would recommend clarifying that limitation only applies for the duration of the revocation sanction imposed by the Parole Board. It is very common for parolees to be revoked for a short sanction (90 days or other set period of time) but who then are unable to re-release into the community simply because they have nowhere to move and therefore cannot get their “parole plan” approved. When this happens, parolees complete their revocation sanction in prison, but remain in prison indefinitely, serving their reinstated parole term “in house,” sometimes for many years. The bill should clarify that this period of “in-house parole” reinstates the availability of earned meritorious deductions.

The New Mexico Attorney General (NMAG) takes issues with the language used in SB375, arguing that the imprecise terms used will create confusion:

The proposed amendments appear to conflate the difference between “eligibility” to earn [earned meritorious deductions] 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).

NMCD highlights the benefits of using meritorious deductions to incentivize rehabilitation, encouraging active participation in programming, and providing more transparency in the meritorious deduction system. NMCD argues that denying meritorious deductions for those whose parole is revoked provides a clear disincentive for violating parole terms. They see these changes improving outcomes for parolees and probationers, as well as reduced recidivism and more efficient use of NMCD resources.

ADMINISTRATIVE IMPLICATIONS

The New Mexico Adult Parole Board notes that they would have to update their administrative rules in response to the passage of SB375.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB102 would also amend the Earned Meritorious Deductions Act. SB375 also relates to SB17, which amends factors to be considered by the parole board when considering parole of an inmate sentenced to life imprisonment.