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FISCAL IMPACT REPORT

SPONSOR Cadena ORIGINAL DATE 02/11/21
LAST UPDATED 03/11/21 HB 201

SHORT TITLE Probation Release for Some Defendants SB _____

ANALYST Rabin/Dick-Peddie

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	(\$4,443.3)	(\$4,443.3)	(\$8,886.6)	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to Senate Bill 141

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Administrative Office of the District Attorneys (AOC)

Public Defender Department (PDD)

Attorney General's Office (NMAG)

Sentencing Commission (NMSC)

Corrections Department (NMCD)

SUMMARY

Synopsis of Bill

House Bill 201 provides that defendants placed on probation will automatically be released if they are classified as a minimum- or medium-level risk by a validated scoring instrument, have met all the obligations of their probation, and have completed one-half or more of the period of probation.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

The Corrections Department (NMCD), the Administrative Office of the Courts (AOC), and the Public Defender Department (PDD) expect HB201 would result in reduced costs to NMCD's

Probation and Parole Division by reducing probation and parole officer caseloads. AOC anticipates a similar impact on local court supervision programs.

As of February 12, NMCD reported it supervised 9,996 offenders on probation.

Although HB201 does not specifically define what can be considered a “validated scoring instrument” or the type of “risk” that must be measured for purposes of this bill (see Significant Issues, below), this analysis assumes general recidivism risk scores from the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) assessment can reasonably be used to estimate the number of probationers who would be considered minimum- or medium-risk under this bill. Data from NMCD-administered COMPAS assessments of probationers between July 2016 and February 2019 show 71.3 percent of probationers had a general recidivism risk score that would be considered minimal- or medium-risk.¹ Assuming risk levels have remained consistent and the probation population remains relatively steady, this analysis estimates 7,132 probationers would qualify as minimal- or medium-risk for general recidivism.

While data on the number of probationers who violate the conditions of their probation at least once are not available at the time of this writing, LFC analysis of a random sample of *parolee* files closed in 2016 found 67 percent of parolees violated the conditions of their parole at least once. Assuming similar levels of violations among probationers (and assuming not violating the conditions of probation is sufficient to qualify an offender as having met all the obligations of their probation), an estimated 2,353 probationers would be eligible to have their probation halved under HB201.

On average, NMCD reports supervision of offenders on probation and parole costs \$3,776 per client per year (this includes community corrections programs, standard supervision, and intensive supervision programs for men and women). Assuming similar costs in future fiscal years, the annual cost of supervising offenders who would qualify to have their probation halved under this bill is \$8.9 million. Halving these offenders’ parole would result in estimated savings of \$4.4 million annually.

Additionally, NMCD and PDD note that the bill provides an additional incentive for probationers to comply with supervision conditions, freeing up resources that would otherwise be required to address those violations. This may result in even greater cost savings. AOC notes the bill may allow NMCD and local court supervision programs to shift resources toward probationers who require higher levels of comprehensive supervision, community supports, and rehabilitation.

SIGNIFICANT ISSUES

Probation Populations and Recidivism. AOC and the Sentencing Commission (NMSC) cite research showing increased probation time results in additional costs and may not improve public safety. AOC notes that many states have undertaken probation reform initiatives such as probation early release programs to enable the reallocation resources for higher need and risk populations. By deploying national probation reform standards and evidence-based practices to targeted

¹ COMPAS risk/need decile scores of 1-4 are regarded as low risk because they fall below average for the total NMCD population. Decile scores of 5-7 are regarded as medium risk because they are in the middle of the distribution and represent cases that are very close to average. Decile scores of 8 and above are regarded as high risk because they are in the top third of the distribution. This analysis considers decile scores of 1-7 to constitute minimum- or medium-level risk under HB201.

probation populations, agencies may be able to better utilize resources and staff providing long term lasting impact to community safety while creating efficiency and better use of current funding.

A [2020 report by the Pew Charitable Trusts](#) (Pew) found the growth and size of probation populations has burdened state and local agencies, resulting in stretched resources and reducing those agencies' ability to support rehabilitation services and programs, ensure accountability, and provide the best return on taxpayers' public safety investments. The length of time individuals remain on supervision is a key factor driving the size of the probation population and the resultant cost increases. While the average probation term declined by about 3 percent nationally between 2000 and 2018, the average term in New Mexico increased 34 percent over the same period, from 18 months to 24 months, and the state's probation population increased 15 percent.

The 2020 Pew report also notes a growing list of high-quality studies showing long probation sentences are not associated with lower recidivism rates and are more likely to lead to technical violations than short probation sentences. A [2019 report from the Council of State Governments](#) (CSG) found 11.5 percent of 2017 state prison admissions were due to technical probation violations.

AOC states HB201 tracks national probation reform efforts by proposing strategies such as shortening the period of probation for some probationers in turn reducing overwhelming caseloads and targeting resources to offenders who need more. The agency states that similar changes in other states allowed supervising agencies to reallocate resources and provide the greatest benefit and impact to individuals in the early months of their probation and at highest risk of reoffending.

PDD notes that the majority of probation violation proceedings for which it represents probationers occur within the first half of a five-year probation term. The agency states that once a probationer has proven their ability to succeed in that period of time, it makes sense to prioritize supervision resources for those who may be struggling and require additional support.

Validated Scoring Instrument. HB201 does not define “validated scoring instrument” or “validated,” so it is not clear what assessments would qualify under the provisions of this bill. Assessments may be validated across different populations and validation may be vendor-driven or provided independently. The vast difference in interpretations of validation may cause issues when implementing the provisions of this bill and such ambiguities may lead to litigation. It may therefore be desirable to add a definition to clarify legislative intent regarding what qualifies as a validated risk and needs assessment.

Additionally, the bill does not define “minimum level risk” or “medium level risk.” Interpretations of what qualifies as minimum- or medium-level risk may vary based on scoring instruments or an administering agency's policy. Further, the bill does not identify what sort of risk the validated scoring instrument would measure. The office of Attorney General (NMAG) notes that a probationer might have a high risk of reoffending but a low risk of violence, or vice versa. Without knowing what type of risk is intended to be measured, NMAG notes it is unclear whether a validated scoring instrument exists to gauge that type of risk.

The Administrative Office of the District Attorneys (AODA) and NMAG both note that the bill should specify who will be responsible for administering the scoring instrument to probationers, and NMAG adds that it is not clear when these assessments would be conducted. AODA also adds

that there will likely be questions raised regarding what kind of evaluation (if any) will be performed to determine if the scoring instrument is effective.

AOC adds that national probation reform models recommend the use of a validation scoring tool designed to assess offenders for risks and needs that drives community supervision and rehabilitation. Because probation programs exist on both the state and local level, AOC recommends further direction be added to the bill to ensure all programs are using the same tool, eligibility, and performance outcome metrics (if that is the intent of the bill). The agency states that better understanding of what tool may be used and how risk in a probation setting is defined is needed to ensure implementation meets national standards and are evidence based.

RELATIONSHIP

HB201 relates to Senate Bill 141, which also amends Section 31-20-5 NMSA 1978 and provides for probationers to waive future formal resolution for technical parole violations in favor of a system of graduated sanctions and for the court to designate specific and particular conditions as warranting a standard probation violation for certain offenders. PDD does not feel the amendments to this statute proposed by SB141 and HB201 would conflict.

TECHNICAL ISSUES

NMAG notes the following issue:

As part of their sentence, sex offenders must serve an indeterminate period of probation. NMSA 1978, § 31-20-5.2(A). This period must last at least five years and at most 20 years. *Id.* After the offender serves five years of probation, the court must hold a hearing every two and-a-half years to review whether he or she should remain on probation. *Id.* (B). HB 201 would potentially conflict with this statutory scheme by automatically releasing some offenders. In addition, it is unclear when a sex offender would have “completed one-half or more of the period of probation” because the overall length of the probationary period would be indeterminate.

AOC also notes an area requiring technical clarification:

In Section C, the bill states: “A defendant shall automatically be released from probation”. Further clarification is needed to specify whether releases from probation are intended to release the defendant from supervised probation to unsupervised probation, or release the offender from serving the remainder of their sentence. This clarification will help define the implications of timelines for restitution responsibilities, treatment and rehabilitation plans and victim impact.

OTHER SUBSTANTIVE ISSUES

AOC notes that this bill may have the unintended consequence of judicial officers ordering increased periods of probation sentences. The agency suggests that the development of or revision of statewide probation standards would be helpful for educating criminal justice stakeholders, community members, probation agencies and state leaders to build a consensus of understanding, definitions, and implementation strategy. In addition, AOC states that, as with any reform initiative, explanation and details of how this change to the system will be measured may be needed

to better inform system partners to ensure counterproductive practices do not result.

ALTERNATIVES

AODA notes that courts can currently release defendants from probation early upon motion of the defendants.

AMENDMENTS

NMSC suggests an applicability section of the bill would be useful if the intent is to apply to current probationers as well as people who placed on probation after the bill takes effect.

AOC suggests the following be considered:

The language in Section C “automatically be released from probation” may be in conflict with the exercise of judicial discretion at time of sentencing. There could be a need for a review by a judge or court to ensure the terms of the sentence imposed were met, and not only obligations of probation. To allow for judicial review, allowing for a reconsideration process in certain cases or for offenders with convictions involving violent crimes to address victim notification of early release from probation may be helpful. This could result in additional court hearings.

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