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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/30/2017

**SPONSOR** Ortiz y Pino **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** Medical and Geriatric Parole **SB** 116

**ANALYST** Rogers

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

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	Substantial, see Fiscal Impact Section	Substantial, see Fiscal Impact Section	Substantial, see Fiscal Impact Section	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB 216.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Sentencing Commission (NMSC)  
 Adult Parole Board (APB)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 116 proposes to repeal Section 31-21-25.1 NMSA 1978, which is the current statute that sets forth protocols for the medical and geriatric parole program. Definitions for the terms “geriatric inmate,” “permanently incapacitated inmate,” and “terminally ill inmate” that are currently found in the repealed statutory section are replicated in Section 1 of the bill. The bill would take away the authority of the Parole Board, and give it to the NMCD Probation and Parole Division (PPD) Director, regarding the early release and parole of what is termed the “medical and geriatric parole” of geriatric, permanently incapacitated, and terminally ill inmates.

Section 2 of the bill sets forth proposed new protocols for the medical and geriatric parole program. The Director of the Adult Probation And Parole Division is required to identify geriatric, permanently incapacitated and terminally ill inmates, consider applications for release from inmates, and authorize the release of eligible inmates. Inmates are not eligible if convicted

for first degree murder or whose release is not compatible with the welfare of society. Rules shall be implemented by July 1, 2017.

Section 2 also sets forth criteria that the Director shall consider when reviewing an application for geriatric or medical parole:

- age;
- severity of illness, disease or infirmities;
- comprehensive health evaluation;
- institutional behavior;
- level of risk for violence;
- criminal history; and
- alternatives to maintaining the geriatric, permanently incapacitated or terminally ill inmate in traditional settings.

The Director must report annually to the appropriate legislative interim committee the number of applications for medical and geriatric parole received by the Director; the nature of the illnesses, disease or conditions of the applicants; and the reason any application for medical or geriatric parole was denied.

## **FISCAL IMPLICATIONS**

Geriatric, permanently incapacitated, and terminally ill inmates are generally much more expensive to house in prison than are healthy inmates. It is difficult to estimate exactly how much of a cost saving there would be with the policy change due to issues listed below by NMCD.

NMSC analysis of the NMCD's population (as of 6/30/16) found a total of 159 inmates were 65 years of age or older on that date: 151 males and 8 females. For the age cohort 55-64, there was a total of 529 inmates: 490 males and 39 females. LFC analysis shows using NMCD's FY16 average cost per inmate of \$44.5 thousand, the release of all 159 inmates 65 or older could result in up to \$7.1 million of savings from incarceration costs within NMCD's budget.

However, the bill requires a substantial amount of additional work by NMCD in trying to screen and evaluate applications and inmates seeking a medical or geriatric parole. It requires the Director to digest and sift through complex medical information and consider several factors or criteria, and to do so within thirty days of receiving an application. While the bill requires the NMCD or its Probation and Parole Director to incur substantial costs in performing these functions, it appropriates no money to the NMCD to offset these costs, such the hiring of FTEs to help perform these substantial functions including the yearly reporting function. In fact, the bill seems to require that only the Director can review the geriatric and medical parole applications, and that such reviews cannot be delegated to other staff. NMCD has not provided a cost analysis detailed how many additional staff and other resources may be needed.

In previous year's analysis on similar bills, NMCD pointed out the difficulties of medical parole. First, the number could increase due to a fluctuation of new offenders convicted and committed to NMCD custody who might be eligible. Second, in some situations, medical conditions improve, and offenders once eligible might become ineligible. Third, nursing homes generally

refuse to accept or house these types of inmates making it difficult to find suitable placements for these offenders. Fourth, the parole board makes the final determination whether to grant this type of parole, and is free to refuse to grant the parole at its discretion. Fifth, because NMCD receives so many new offenders each, it is possible that some eligible offenders might initially be missed or overlooked.

The APB currently incorporates medical and geriatric applications within their current hearing structure; therefore, no fiscal impact would be realized by decreasing these hearings.

### **SIGNIFICANT ISSUES**

APB points out the bill makes significant changes to current statute. The proposal removes the releasing authority of the Parole Board and puts responsibility on the Director of Probation and Parole at NMCD. It is not normally a function of NMCD to approve parole release and then monitor parole supervision. The proposal calls for an administrative review by the Director of Probation and Parole and removes the current practice of having a parole hearing in person where observation is vital in decision making. The proposal also indicates a timeline of 72 hours to release the inmate, circumventing current statutes to provide for victim notification and attendance at a hearing.

APB also explains the proposal indicates the director shall authorize the board to release the inmate. The Parole Board does not currently report to NMCD. The Parole Board is administratively attached and works cooperatively and effectively together but are under a separate mission.

NMSC shared an article published by the PEW Charitable Trusts including the following: “health care for aging prisoners costs far more than it does for younger ones, just as it does outside prison walls. Corrections departments across the country report that health care for older prisoners costs between four and eight times what it does for younger prisoners.”

NMCD submits the following analysis:

The bill requires the Director to release offenders on medical and geriatric parole whose release is not incompatible with the welfare of society. This bill if passed would result in a significant change in how parole is determined in this state. Instead of having an entity which is separate and independent from the NMCD decide parole, like it is now with the Parole Board, this bill requires NMCD to make parole decisions on some of the very offenders (inmates with geriatric and medical issues) it is incarcerating. This [...] creates an inherent conflict of interest for the NMCD. It is very likely to result in every denial of geriatric or medical parole by the Director being scrutinized and constantly second guessed. Litigation is likely to ensue against the NMCD or its PPD Director any time any offender is denied geriatric or medical parole, and also any time this parole is granted and the parolee then harms or kills someone or otherwise violates the law. The bill does not create any immunity from lawsuits for the NMCD or its PPD Director regarding its geriatric and medical parole decisions, nor does it appropriate any money to the NMCD to pay for the defense of these lawsuits or any resulting judgments, settlements, or attorneys fees awards.

The bill also places substantial burdens on the Parole Board. It requires the Board to develop a comprehensive discharge plan for the medical and geriatric parolees, but only gives it 72 hours from the time the Director tells it to release the offender to develop such a plan.

Additionally, under this bill, the Board has to release the offender if the PPD Director tells it to, even if the Board has the opinion based on its experience and expertise that the parole is incompatible with the welfare of society due to the offender's residence upon parole, etc. The bill eviscerates the statutory authority of the Parole Board, and places parole authority for medical and geriatric offenders with the very agency (NMCD) which is incarcerating those offenders.

By requiring the PPD Director to provide reasons in a yearly report to an interim legislative committee as to why he or she refused to release an offender requesting medical or geriatric parole, the bill seems destined to further politicize the parole process. The motives of the PPD Director in deciding to parole or not parole offenders will be routinely second guessed and questioned [...].

By requiring the PPD Director to provide medical information to the interim legislative committee regarding all geriatric and medical parole applicants, the bill potentially forces the Director to reveal personal or identifiable medical information in violation of state and federal law, primarily HIPAA.

In many cases, when a geriatric or seriously medically ill inmate is considered for geriatric or parole, it is difficult to find a suitable placement for the inmate in the community. Often, nursing homes and medical facilities do not want to take these inmates. Alternatively paroling these inmates to the custody or care of a public hospital like UNMH is also not reasonable or proper. This bill does nothing to solve or change this ongoing problem.

Finally, it is not clear why the bill is needed. If the Parole Board, which already has the authority to review applications and to parole geriatric and medical inmates when it deems appropriate, is not processing the applications quickly enough or is not providing information on the yearly numbers and reasons for denials, it would seem reasonable to have the legislature work closely with the Parole Board on this issues rather than shift this responsibility to the NMCD PPD Director.