

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Pirtle</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>3/6/23</u>
	<b>BILL</b>
<b>SHORT TITLE</b> <u>Prisoner Parole Audit and Hearing Webcast</u>	<b>NUMBER</b> <u>Senate Bill 451</u>
	<b>ANALYST</b> <u>J. Torres</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\*

(dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMSC	No fiscal impact	No fiscal impact	No fiscal impact			
NMAPB	No fiscal impact	\$50.5	\$50.5	\$100.1	Recurring	Operating Budget
NMCD	No fiscal impact	\$3,100.0	3,100.0	\$6,200.0	Recurring	Operating Budget
<b>Total</b>		\$3,150.5	\$3,150.5	\$6,300.1	Recurring	

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent version of this legislation.

### Sources of Information

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)

New Mexico Sentencing Commission (NMSC)

Adult Parole Board (APB)

Law Offices of the Public Defender (LOPD)

## SUMMARY

### Synopsis of Senate Bill 451

Senate Bill 451 amends Section 31-21-25 NMSA 1978 (D) through (E) as follows:

D. The parole board shall adopt a written policy specifying the criteria to be considered by the board in determining whether to grant, deny or revoke parole or to discharge a parolee. When the determination is whether to grant or deny parole, these criteria shall include a review by the parole board of: (1) the attestation provided to the board by the corrections department pursuant to Section 33-2-52 NMSA 1978; and (2) the audit of the prisoner's earned meritorious deductions conducted by the corrections department pursuant to Section 33-2-52 NMSA 1978. E. When the parole board conducts a parole hearing for an offender, [and] the parole board shall webcast the hearing live online. The parole board shall, upon request of the victim or family member allow the victim of the offender's crime or a family member of the victim to be present during the parole hearing. If the victim or a family member of the victim requests an opportunity to speak to the board during the hearing in public or private, the board shall grant that request.

The bill also enacts a new Section 33-2-52 NMSA 1978; to be appended to existing statutory provisions regarding *State Correctional Facilities*. As noted by agency analysts, this section is similar to existing Section 33-2-34 NMSA 1978, *Eligibility for earned meritorious deductions*. It supplements the existing meritorious deduction section as follows:

*Early Release from Confinement.* At least 30 days before any parole hearing for the release of an inmate from confinement, the Corrections Department shall: A. review all phone calls placed or received by the inmate within the last 90 days and attest to the parole board that this review has been conducted; and B. audit and make publicly available online the meritorious deductions earned by the inmate.

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

## FISCAL IMPLICATIONS

NMAPB states:

The fiscal impacts on the NMAPB would be moderate associated with additional document preparation and review, and high for the cost of public webcasting of all parole hearings. Per the FY23 Classified Salary Schedule for Information Technology, at the lowest pay band IA “IT End User Support I” at midpoint \$43,981 with a 15 percent increase for benefits, the minimum costs for one FTE staff member would be at \$50,473.65/year at a minimum of 7 percent increase to the FY23 agency budget.

NMCD states:

The fiscal implications of the bill are considerable. Over two thousand parole hearings are held each year. This bill would require monitoring of over seventy thousand inmate phone calls per year. This will require several additional FTEs and a software solution. The cost to implement will be over \$3 million annually.

The platform in use today to conduct parole hearings does not include a live stream option. Providing the ability for both public and/or private comment within the live streaming session for victims is also not something our solution currently provides. The agency would need to invest in a new live streaming solution. We anticipate the system will cost between \$80.0 through \$100.0 annually.

LOPD states:

It is not clear what impact this bill would have on the LOPD, as parole board hearings usually do not require representation by the LOPD. The exception is for sex offender parolees, who are entitled to representation by the LOPD at their five-year review hearings. § 31-21-10.1(F). If LOPD attorneys are made to comb through voluminous phone call records and to litigate the specifics of a parolee/inmate’s phone calls to determine eligibility for release from supervision, it might require a concomitant need for additional FTEs.

## SIGNIFICANT ISSUES

NMAPB states:

If passed, the bill would overturn decades' long precedent, including statutory and code requirements that the board keep records and histories confidential and privileged. See Section 31-21-6 NMSA 1978, NMAC 22.510.2.8, and N.M. Attorney General Opinion 56-6509 (1956). The board's minutes from each hearing are considered a public record; however, the social records, reports and histories discussed during the hearings cannot be disclosed directly or indirectly to anyone other than the board or the director. A webcast of all parole hearings would not only violate the parolee/inmate's statutory rights to their privileged records, but also intrude upon the rights of victims as enshrined in New Mexico law.

The board holds nearly 3600 hearings a year and in general, holds hearings on each calendar working day, up to 260 days a year. Requiring more prep work and webcasting of all hearings would overburden the all-volunteer parole board, the agency staff, and increase significantly the board's fiscal year operating budget.

NMCD states:

There is reasonable concern about the parole board webcasting parole board hearings live online. Currently, parole board hearings are closed hearings and are not open to the public. Under the New Mexico Administrative Code, Title 22 Courts, Chapter 510, Parole Hearing 22.510.2.8, the parole board limits who is allowed to attend parole board hearings. Per 22.510.2.8 NMAC, legal counsel for a prospective parolee is not permitted in a regular parole board hearing. In addition, visitors will not be permitted unless cleared by the chairman with consent of the other board members. Per the 31-21-25 NMSA, section E, victim(s) of record are allowed to attend parole board hearings and have the opportunity to speak to the parole board during the hearing in public or private.

If victims are to present their testimony in a live webcast online public setting, this would be in violation of their victims' rights to privacy. There are rights granted to victims in Article II, Section 24 of the New Mexico Constitution. These constitutional rights of the victim have also been codified in the Victims of Crime Act, specifically Section 31-26-4 (A) and (C) Victims have the right to be treated with fairness and respect for their dignity and privacy throughout the criminal justice process, and to be reasonably protected from the accused throughout the criminal justice process. Crime victims have a reasonable right to privacy at parole board hearing. By webcasting parole board hearings to the public, victim(s) rights to privacy would be violated. There is also concern that this would cause revictimization to those victims and family members who participate at parole board hearings.

During parole board hearings, there are portions of the hearing where confidential and protected information are discussed such as an inmate's social record, to include medical and mental health records. To webcast parole board hearings would be in violation of 31-21-6 NMSA. Per 31-21-6 NMSA Protection of Records, all social records, including presentence reports, pre-parole reports and supervision histories, obtained by the board are privileged and shall not be disclosed directly or indirectly to anyone other than the board, director, sentencing guidelines commission or sentencing judge, authorities of the institution in which the prisoner is confined, and the sentencing judge, board and director. Additionally, an inmate's medical and mental health records are protected by HIPPA.

The parole board hears inmates who have been moved out-of-state through interstate compact. Inmates who are transferred through interstate compact to other states are transferred due to safety and security reasons and their location is protected by interstate compact rules, which this bill would violate.

Lastly, the department has reasonable concerns that if parole board hearings are webcasted to the public, this would create safety and security risks to the prison facilities, inmates, parole board members, victim services and crime victims.

LOPD states:

This bill appears to be a continuation of discussions that arose during last year's gubernatorial campaign. See <https://nmpoliticalreport.com/2023/02/16/senate-republican-pushes-moniques-law-to-review-inmate-calls-before-release/>.

Thousands of prisoners are managed by the Department of Corrections who are sentenced to varying terms of incarceration. EMDA credits are already tracked and are available by request from defense counsel and prosecuting attorneys, or through IPRA for the general public. The Department of Corrections also provides disciplinary reports and EMDA calculations to the parole board for consideration prior to release and must provide the parole board additional information, if requested. See § 31-21-13. The EMDA calculations can be complex. While on occasion there may be miscalculations and early release is granted by mistake, the opposite is also true—many times people remain incarcerated past their lawful terms of incarceration for months or even years.

Inmate phone calls are also not private and may be provided to prosecutors if someone reports a new crime being orchestrated over such calls. Victims of crimes are already entitled to participate in parole release hearings and are contacted by the DA or AG to do so and are also entitled to confidentiality (thus raising concerns with a public webcast). There are laws to protect victims from menacing conduct if their safety upon release of a parolee is a real concern, and if the offender is released and still has a period of parole to serve, the parolee's conduct is monitored by a parole officer consistent with the parolee's conditions of release.

Moreover, people are routinely released from incarceration after various kinds of sentences and sanctions without such extensive, cumbersome, invasive record checks that may or may not reveal any misconduct. Creating additional labor-intensive work for the Corrections Department and parole board is an unnecessary burden on an already taxed system.

NMSC states:

SB451 requires that the Corrections Department review all calls placed or received by an inmate within the 90-day period preceding that review, and that the review shall take place at least 30 days before the inmate's parole hearing. The purpose of performing the review at least 30 days before the parole hearing is unclear, but would necessarily leave out of the review at least the last 30 days immediately preceding the parole hearing, a time during which an inmate could discuss whether they intend to engage in a criminal act upon their release.

It is also unclear in SB451 whether the bill intends for review of the substance of the

calls, or if it intends only for review of the call logs.

Advocates against the monitoring of prison calls cite privacy concerns, but the New Mexico Court of Appeals ruled in 2007 that inmates give implied consent to the monitoring and recording of phone calls when they place and receive calls after receiving actual or constructive notice that the calls may be monitored and recorded. Thus, the Court determined that monitoring and recording prison calls is not a violation of the right to privacy under the Abuse of Privacy Act, Chapter 30, Article 12, NMSA 1978. See *State v. Templeton*, 2007-NMCA-108.

## PERFORMANCE IMPLICATIONS

LOPD states:

The New Mexico Parole Board already has a significant backlog of Sex Offender Parole Review Cases to review, after the Supreme Court's recent decision in *State v. Thompson*, 2022-NMSC-023, which granted five-year review hearings to parolees who serve all or part of their parole terms while in custody.

NMAPB states:

If the members were required to appear virtually for each parole hearing, this could impact not only their personal safety but also their adjudicatory autonomy.

## ADMINISTRATIVE IMPLICATIONS

NMAPB states:

The bill if passed will create additional administrative duties by the volunteer parole board members and its staff, to include additional file preparation and review along with a dedicated and trained individual(s) who would monitor the webcast for all 3600 hearings a year.

## CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

LOPD states:

Potential conflict: NMSA 1978, § 31-21-6 protects as confidential the records of parolees submitted to the parole board for release. This might interfere with public broadcast of hearings.

## TECHNICAL ISSUES

LOPD states:

The parole board conducts hearings via WebEx, which routinely presents a host of technical complications that prolongs the duration of hearings. Given the current backlog discussed above, if another technical component is required (webcasting all the board's hearings), the delay to or inability to conduct hearings in a timely manner due to technical difficulties presents due process concerns.

