

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS
2024 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Check all that apply:

Original X Amendment _____
Correction _____ Substitute _____

Date Prepared: Feb. 1, 2024

Bill No: SB 276

Sponsor: Sen. A. Maestas
Sen. B. O’Neill

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

Person Writing Analysis: AAG Pilar Borneo

Short Title: PROBATION AND
PAROLE SENTENCE

Phone: 505-537-7676

Email: legisfir@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	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: Senate Bill 276, if passed, will change the maximum period of probation from five (5) years to a period “not to exceed the maximum allowable incarceration period” for the offense. It also states that probation periods may not exceed “the jurisdiction of the court.” It will also remove the concurrent supervision between probation and parole authorities.

FISCAL IMPLICATIONS

None to this office.

SIGNIFICANT ISSUES

The bill changes the maximum period of probation from five (5) years to a period “not to exceed the maximum allowable incarceration period” for the offense. It also states that probation periods may not exceed “the jurisdiction of the court.”

SB 276 would amend Section 31-20-5 of 1978 NMSA (2021), related to periods of probation and parole.

This bill does not affect the length of any sentences as described in § 31-18-15, the proposed amendment is to subsection (D) of § 31-18-15. This amendment conflicts with the language already contained in § 31-18-15(D). Subsection (D) currently states in pertinent part, “When a court imposes a sentence of imprisonment. . . and suspends or defers the basic sentence of imprisonment. . . the period of parole **shall** be served[.]” (emphasis added). But the amended language would add, “Parole shall not be required if a partially suspended sentence involving probation would be concurrent.” Pg 4, line 16-18. This can become contradictory because of the clause in between that states “for the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred.” Pg 4, lines 12-16. Meaning in practice, at sentencing, Courts are required to designate a period of parole pursuant to NMSA 1978 Section 31-21-10 regardless of the suspended sentence. It is easier to show how this Compare these two instances to illustrate where the issues may arise:

EXAMPLE 1: Offender A is convicted of a 2nd Degree felony, he is sentenced to 9 years’ imprisonment followed by two years parole (parole period enumerated for a 2nd degree felony under Section 31-21-10) which is entirely suspended on condition he serves those

9 years on supervised probation. Offender A is exemplary on probation, has no violations or sanctions and successfully completes his sentence. As the law currently stands without this amendment, Offender A will not be supervised by the Parole Board at any time. With the amendment, the result also remains the same.

EXAMPLE 2: Offender B is convicted of a 2nd Degree felony, he is sentenced to 9 years' imprisonment followed by two years parole (parole period enumerated for a 2nd degree felony under 31-21-10) which is entirely suspended on condition he serves those 9 years on supervised probation. But at one year of being on probation Offender B violates and has his probation revoked for two years and at the completion of those two years he is reinstated back onto probation for the remaining six years of his 9-year sentence. Because he was imprisoned for two years, parole gets triggered. This results in the contradiction whereby he simultaneously shall serve a period of parole and parole shall not be required.

SB 276 also conflicts with Section 31-21-10. Specifically, Section 31-21-10 states, “an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department **shall** be required to undergo a two-year period of parole.” NMSA 1978 § 31-21-10(D) (emphasis added). The example of this would be: take Offender B from the above example, he is convicted of a 2nd degree felony, sentenced to 9 years imprisonment, of which 5 years is suspended on condition he be supervised by probation for those 5 years, but he has to first serve 4 years in DOC custody. This is a partially suspended sentence. So, under SB 276, Offender B **SHALL NOT** be required to serve parole because parole and probation would be concurrent. But under 31-21-10(D) he shall be required to undergo a two-year period of parole.

SB 276 also addresses the situation where a defendant is required to serve a term of probation subsequent to incarceration. Currently, § 31-20-5(B) provides that in this situation any term of probation will to be served subsequent to any term of parole, with time served on parole to be counted toward the period of probation. SB 276 proposes that any period of probation served subsequent to incarceration will now be served instead of any corresponding period of parole. Again, this creates a contradiction with § 31-21-10 (see the above analysis).

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relationship – HB 155 THREE STRIKE LAW

Relationship – HB 39 LIMIT INCARCERATION FOR TECHNICAL VIOLATIONS

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS