



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

	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis: This bill proposes to add language to Section 30-31-23 of the Controlled Substance Act, which criminalizes the simple possession of controlled substances (without intent to distribute). Section 30-31-23 establishes crimes for possession of controlled substances ranging from petty misdemeanors to third degree felonies, depending on the type and quantity of substance possessed.

Under current law, if a person violates their probation and has prison imposed as a result, they get credit toward the prison term for the time successfully completed on probation before the revocation. This bill would mandate that an individual who receives a suspended or deferred sentence for simple drug possession and then violates any condition of their probation will receive **no** credit against their revocation sentence for the probation time already served. The bill states that, in the event of a probation violation, “the court may impose any sentence that the court could have originally imposed, and **credit shall not be given** for time served by the person on probation.” (Emphasis added.)

**FISCAL IMPLICATIONS**

The Law Offices of the Public Defender (LOPD) represents probationers in district court when probation violations are referred to the district attorney for revocation proceedings. This bill raises the stakes of probation violation hearings, and makes them more akin to an entirely new sentencing hearings for possession of controlled substance offenses because this bill mandates that no credit be given to those offenders who commit any violation of their probation.

Because this bill proposes an automatic zero-tolerance, no credit approach to any violations of probation in drug possession cases, it is likely to impact plea negotiations. Enactment of any higher criminal penalty is likely to result in more trials, as more defendants will prefer to risk a trial than take a plea to the greater penalty. Increase in additional trials is time-consuming and could result in a need for additional attorneys and staff. In any event, accurate prediction of the fiscal impact is impossible to speculate; assessment of the required resources would be necessary after implementation of the proposed statutory changes.

There has been no research that has found that increasing penalties has a deterrent effect on the commission of crimes. Therefore, particularly given its non-discretionary nature, this bill would likely lead to an increase in incarceration, which would increase costs and population in Department of Corrections.

## SIGNIFICANT ISSUES

This bill would create a new exception to the general rule that defendants are entitled to credit for time spent on probation toward the imposition of a suspended sentence if revoked. *See* NMSA 1978, § 31-21-15(B) (“ . . . credit shall be given for time served on probation”). Presently, only two types of crimes have “no-credit” provisions for time spent on probation – DWI and domestic violence. Treating drug possession similarly to these offenses is concerning. Many individuals convicted of possession of a controlled substance are suffering from addiction. Many of these offenders violate their probation as a result of addiction-related technical violations, rather than the commission of a new crime. Creating a zero-tolerance, no credit policy for any violation of probation for these non-violent offenses would serve only to further criminalize addiction and to needlessly extend supervision or incarcerate individuals making a genuine effort to complete probation successfully.

This bill differs from the existing “no credit” statutes for domestic violence, which contain language limiting the total length of probation and incarceration. Section 30-3-15, for example, which criminalizes battery against a household member, specifically provides: “If an offender violates a condition of probation, the court may impose any sentence that the court could originally have imposed *and credit shall not be given for time served by the offender on probation*; **provided that the total period of incarceration shall not exceed three hundred sixty-four days and the combined period of incarceration and probation shall not exceed two years.**” NMSA 1978, § 30-3-15(D) (emphasis added). The language in this bill is consistent with the “no credit” language in the statute governing the penalties for driving under the influence of intoxicating liquor or drugs. *See* NMSA 1978, § 66-8-102(U).

Because this bill contains no limiting language, it allows sentences to be made significantly harsher for individuals convicted of possession of a controlled substance who violate their probation. Rather than requiring the balance of a suspended sentence to be served in the event of revocation, or simply restoring a defendant to probation in the event of a minor technical violation, drug possession offenders would be back at square one, regardless of how successful they had been prior to the time of violation, and regardless of the nature of their violation. Under this proposed amendment as written, an individual convicted of possessing a controlled substance at the level of a fourth degree felony, for example, could successfully serve 17 out of 18 months of probation, miss an appointment with their probation officer, and be required to start all over again, effectively doubling the length of their supervision.

It is also common for drug possession probationers to have years of mandatory habitual offender enhancements withheld by plea agreement, to be imposed upon probation revocation. Thus, the credit becomes extremely impactful when a suspended four- or eight-year enhancement is imposed upon revocation.

Additionally, Section 30-31-23 encompasses a wide range of possessory conduct, ranging from that constituting a petty misdemeanor to that constituting a third degree felony. *See* NMSA 1978, § 30-31-23(B)(1); NMSA 1978 § 30-31-23(F)(5). It also encompasses certain possession crimes specifically committed by juveniles. *See* NMSA 1978, § 30-31-23(C). The proposed amendment contained in this bill would divest the district court of discretion in sentencing a wide array of conduct and a wide array of defendants. By divesting the sentencing court of that discretion, this bill fails to take into consideration that offenses and offenders should be evaluated on a case-by-case basis to determine what particular harm needs to be addressed and what punishment best addresses that harm. That is particularly true in this instance where the mandatory consequence

arises not only from new criminal activity, but from *any* violation of probation, for which the standard of proof is low and which could include conduct as innocuous as missing an appointment or failing to timely complete community service.

#### **PERFORMANCE IMPLICATIONS**

#### **ADMINISTRATIVE IMPLICATIONS**

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

#### **TECHNICAL ISSUES**

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**