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FISCAL IMPACT REPORT

BILL NUMBER: Senate Bill 239

SHORT TITLE: Controlled Substance Continuing Sentencing

SPONSOR: Cervantes

LAST ORIGINAL
UPDATE: _____ **DATE:** 02/11/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the District Attorneys

Law Offices of the Public Defender

New Mexico Sentencing Commission

Corrections Department

Department of Public Safety

SUMMARY

Synopsis of Senate Bill 239

Senate Bill 239 amends Section 30-31-23 NMSA 1978 (Controlled Substances Act) to grant the sentencing court continuing jurisdiction over individuals convicted of possession of a controlled substance. Specifically, the bill authorizes the court to retain authority after sentencing to modify or adjust the defendant's sentence. This means that, following a conviction for possession under Section 30-31-23, the district court may later revisit the sentence and change its terms, including conditions related to supervision or the structure of the sentence.

In effect, the bill gives courts ongoing authority in possession cases to reconsider and revise sentences after judgment has been entered, rather than limiting the court's authority to the initial sentencing proceeding.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and the length of time served that might result from this bill could have moderate fiscal impacts. Senate Bill 239 increases potential custodial exposure for individuals convicted under Section 30-31-23 NMSA 1978 by requiring that, upon probation revocation, no credit be given for time successfully served on probation and by permitting the court to impose any originally available sentence. Increasing the effective length of incarceration for certain individuals may result in fewer releases relative to admissions, thereby increasing the total prison population at a given time and driving up costs to the state general fund.

The New Mexico Sentencing Commission (NMSC) reports that in FY24, 4,286 cases were disposed of with possession of a controlled substance as the lead offense, and 24 percent resulted in a full or partial suspension or deferral. Although NMSC does not currently have data on probation revocations specific to these cases, changes to revocation consequences may result in additional prison admissions or longer prison stays. The Corrections Department (NMCD) reports the average cost of incarceration is \$153.08 per day, inclusive of public and private facilities. Due to the high fixed costs of prison operations, marginal costs for each additional incarcerated individual are lower than average costs; however, any sustained increase in prison population or length of stay would result in recurring costs to NMCD.

The bill may also affect workload for the Law Offices of the Public Defender (LOPD) and the Administrative Office of the District Attorneys (AODA). LOPD indicates that increasing potential custodial exposure in probation revocation proceedings could lead to more contested revocation hearings or trials, potentially increasing demand for attorney time and support staff resources. Additional system costs beyond incarceration, such as judicial branch costs for increased hearings or trials, are not included in this analysis but could be moderate, depending on implementation and case-level responses.

NMCD and the Department of Public Safety (DPS) reported no direct fiscal impact to their operating budgets. Nevertheless, to the extent SB239 results in longer periods of incarceration or additional prison admissions following probation violations, incarceration costs are expected to increase over time. The magnitude of any increase would depend on revocation rates, sentencing decisions, and the length of incarceration imposed upon revocation.

SIGNIFICANT ISSUES

Senate Bill 239 creates an exception to the general rule in Section 31-21-15(B) NMSA 1978 that requires credit for time served on probation when a suspended sentence is revoked. Under current law, only limited categories of offenses, such as DWI and certain domestic violence offenses, contain statutory “no credit” provisions. By extending similar treatment to all convictions under Section 30-31-23 NMSA 1978, the bill would apply a uniform probation revocation standard to a broad range of drug possession offenses, from petty misdemeanors to third-degree felonies, and to certain juvenile-related provisions.

Unlike some existing “no credit” statutes that include caps on total incarceration or on the combined periods of incarceration and probation, Section 30-31-23, as amended by SB239, does not include comparable limiting language. As a result, courts would retain authority to impose any sentence originally available without statutory constraints specific to probation length or aggregate supervision time beyond those already applicable to the underlying offense. This may

result in variation in how revocations are handled across judicial districts, depending on local practices and case characteristics.

NMSC reports that a significant share of possession cases result in suspended or deferred sentences. In practice, probation violations may stem from new criminal conduct or from technical violations of supervision conditions. Because probation revocation proceedings operate under a lower standard of proof than criminal trials, the bill's application to "any condition of probation" may alter the strategic considerations of defendants, prosecutors, and defense counsel in plea negotiations and supervision agreements.

The bill may also intersect with habitual offender enhancements that are sometimes withheld at sentencing and imposed upon revocation, potentially affecting how enhancements are negotiated and structured in plea agreements. Additionally, because Section 30-31-23 encompasses a wide range of conduct and offender profiles, including individuals with substance use disorders, implementation of the bill may have implications for how courts balance supervision, treatment participation, and custodial sanctions in drug possession cases.

SS/dw