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## FISCAL IMPACT REPORT

SPONSOR Sedillo Lopez ORIGINAL DATE 3/3/19  
 LAST UPDATED 3/7/19 HB \_\_\_\_\_

SHORT TITLE Parole & Probation Supervision SB 561/aSJC

ANALYST Edwards

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

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Minimal	Minimal	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with House Bill 564, which also proposes amendments to the same statute.

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of SJC Amendment

The Senate Judiciary Committee (SJC) amendment to Senate Bill 561 strikes references to convictions by plea in magistrate courts as being eligible for probation. The amendment, in Section 1(B), now only allows those convicted by plea to a misdemeanor charge in *metropolitan court* at a preliminary hearing as being eligible for *adult* parole.

#### Synopsis of Bill

Senate Bill 561 amends Section 31-20-5 NMSA 1978, titled “Placing Defendant on Probation,” to provide that “persons convicted by plea in magistrate or metropolitan courts at a preliminary hearing involving felony charges shall be eligible for probation.” It also proposes to change the definition of “institution” so that it now includes county jails in addition to the state penitentiary and any other state institution hereinafter created.

### FISCAL IMPLICATIONS

Neither AOC nor BCMC believe there will be a fiscal impact as a result of the bill. The Metropolitan Court already has its own probation division serving the types of cases described in this bill. Since the bill, as amended by SJC, is not expanding the population that could be served by probation, there is at most a minimal fiscal impact as a result of this bill.

NMCD's analysis to the original bill explains:

It is NMCD's understanding that many felony cases are currently being plead down to misdemeanors in magistrate court. The NMCD does not normally supervise misdemeanor offenders on probation; currently, NMCD supervises only a small number of misdemeanor offenders on probation. Further, misdemeanor offenders normally serve any incarceration period in county jails, not in NMCD prisons. Under this bill, these offenders could plead guilty to felonies in magistrate court or metropolitan court, and this would likely result in a substantial number of new felony offenders which the NMCD would have to supervise on probation or incarcerate in its prisons. While the bill focuses on probation for these felony offenders, the courts likely would instead order incarceration for some of them. Incarceration for felony convictions is normally within in a NMCD prison, as even the lowest level felonies carry an incarceration period of 18 months and the NMCD is statutorily obligated to incarcerate any offender serving a one year or longer incarceration period. There is no appropriation in this bill to cover the Department's substantial costs to incarcerate or provide probation supervision for this additional and likely significant number of offenders. The incarceration and supervision costs are delineated below.

The classification of an inmate determines his or her custody level, and the incarceration cost varies based on the custody level and particular facility. The average cost to incarcerate a male inmate is \$43.4 thousand per year in a state-owned and operated prison and the average annual cost in a privately operated prison is \$32.1 thousand (where primarily only level III or medium custody inmates are housed).

The cost per client in Probation and Parole for a standard supervision program is \$2.9 thousand per year. The cost per client in Intensive Supervision programs is \$1.3 thousand per year. The cost per client in Community Corrections is \$10.1 thousand per year. The cost per client per year for female residential Community Corrections programs is \$24 thousand and for males is \$23.5 thousand.

## **SIGNIFICANT ISSUES**

BCMC explained, in response to the original bill:

**Metropolitan Court is a Court of Limited Jurisdiction:** The Bernalillo County Metropolitan Court ("Metro Court") is a court of limited jurisdiction (See 34-8A-1 through 34-8A-15), and as a general matter has substantive jurisdiction over misdemeanor offenses only. With the exception of conducting felony first appearances and preliminary hearings on defendants charged with felonies, who have been arrested in Bernalillo County, and the pretrial supervision of those felony defendants (up to 60 days) pending their preliminary hearing in the Metropolitan Court, the Metropolitan Court does not have jurisdiction in felony matters.

**Metropolitan Court Cannot Take Pleas to Felonies:** Felony cases are only filed in the

Metropolitan Court when a defendant charged with a felony is arrested in Bernalillo County. At felony first appearances, Metropolitan Court Judges review the criminal complaint for probable cause and set conditions of release for the felony defendants coming before them. If the District Attorney's Office does not pursue a grand jury indictment or a preliminary hearing in the District Court, then a preliminary hearing is held in the Metropolitan Court. At a preliminary hearing, the prosecution presents evidence to the Metropolitan Court; and the Judge determines if, based on the evidence, there is probable cause to believe the defendant committed a felony crime such that the case should be bound over for trial in the District Court. As the Metropolitan Court does not have jurisdiction over felonies, it cannot take pleas in felony cases. Therefore, no defendant will ever be convicted of a felony charge by the Metropolitan Court or placed on a deferred or suspended sentence for a felony conviction and thus placed on probation by the Metropolitan Court. Therefore, paragraph B to Section 31-20-5 proposed by SB 561 exceeds the jurisdictional limits of the Metropolitan Court.

NMCD explained, in response to the original bill, the probation and parole division already has substantial staffing vacancies for its probation and parole officers (PPOs) as well as for its correctional officers. The additional felony probationers and inmates resulting from the passage of this bill would increase existing workloads for already overworked staff. Hiring and retaining PPOs in the current environment, where county and federal entities pay higher salaries after a few years of experience, is difficult for the NMCD. Hiring and retaining correctional officers is also difficult for the NMCD. This bill if it passes will likely negatively impact the provision and quality of incarceration-related and probation supervision-related services at existing staffing levels.

AOC submitted the following analysis in response to the original bill:

Senate Bill 561 will affect situations where a defendant pleads one or more charges from a felony to a misdemeanor. This could include cases where the plea results in misdemeanor conviction on all charges or in situations where some charges are pled to misdemeanors and disposed while others are bound over to district court. In these cases, Senate Bill 561 will allow convicted offenders to be placed on supervised probation with PPD directly from the magistrate or metropolitan court.

This has the potential to increase supervision for individuals who need it, as well as for those who do not. Additional supervision for those who need it will likely benefit both the individual and public safety interests. Intensive or over-supervision for those who do not need it could result in harm to the defendant and a perpetuated public safety concern. Applying risk-need-responsivity principles and core correctional practices would be essential to addressing the potential to over-supervise.

Senate Bill 561 will allow both metropolitan and magistrate courts to refer to NMCD PPD in these limited situations, i.e., convictions from felony-to-misdemeanor pleas. Currently, only magistrate courts are authorized to refer this category of defendants to PPD. This authorization was established by a MOU between the Administrative Office of the Courts (AOC) and NMCD effective in June of 2013. The language of Senate Bill 561 is less restrictive than the MOU, allowing a broader application for the courts to sentence any individuals who are convicted by plea; the MOU restricts referral to "Defendants charged with a violent felony or felonies who plead to misdemeanor convictions *when the felony charge was objectively reasonable and legitimate at its inception*" [emphasis added].

This is one segment of a bigger issue related to probation services in New Mexico. NMCD does not have the staff to adequately supervise all offenders requiring such services sentenced out of state courts, and the definition of “adult” restricts probation services to those convicted in a district court. This is why certain categories or groups have to be identified for inclusion as sought in SB-561. This inability to serve thousands of convicted offenders has resulted in a nearly twenty-year history of county-run probation services, called Misdemeanor Compliance Programs (MCPs), authorized by Section 31-20-5.1 NMSA 1978. The county MCPs vary in service scope and quality. This is due to funding inconsistency, a lack of practice standardization and uniformity around best practices (such as risk-need – responsivity principles and core correctional practices), and little statewide accountability or support. Addressing supervision service quality for every probationer through both state and county-operated programs would likely result in reduced recidivism and increased public safety.

### **ADMINISTRATIVE IMPLICATIONS**

AOC explained, in response to the original bill, if Senate Bill 561 becomes law, there would be a conflict with the MOU currently in place, at least respective to this particular category of offenders. If passing Senate Bill 561 results in termination, rather than revision, of the MOU between AOC and NMCD, magistrate judges will be restricted from referring three additional categories of misdemeanor defendants or offenders to NMCD: 1) defendants convicted of a 3<sup>rd</sup> DWI offense, 2) defendants currently supervised by PPD and individuals who have been supervised by PPD within the last five (5) years, and 3) defendants with violent histories.

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

Conflicts with House Bill 564, which also proposes amendments to the same statute.

### **TECHNICAL ISSUES**

AOC submitted the following in response to the original bill:

If PPD is given authority to supervise this special category of convicted misdemeanor offenders, it is unclear whether PPD officers will have authority to arrest on probation violations under 31-21-15 NMSA 1978 without a self-executing order from the magistrate/metropolitan courts. The MOU between NMCD and the AOC addresses this issue.

Even with this addition to the current statute, the authority of PPD to supervise these particular convicted individuals is still not as clear as it could be. Section 1.B. establishes the eligibility of probation, but these individuals do not meet the definition of “adult” as noted in the definition for “probation” in Section 2.A. By definition, “probation” applies to an “adult” defendant and an “adult” is defined in Section 2.F. as “any person convicted of a crime by a *district court*” [emphasis added].

Suggest updating Section 1(B) for clarity: “Pursuant to Subsection A of this section, persons convicted by plea to a misdemeanor in magistrate or metropolitan courts at a preliminary

hearing involving felony charges shall be eligible for probation.”

TE/gb/al