

SENATE BILL 114

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Bill B. O'Neill

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO PAROLE; CREATING MEDICAL AND GERIATRIC PAROLE PROCEDURES; HJC→ENACTING THE POST-CONVICTION RIGHTS RESTORATION ACT TO CHANGE THE PROCEDURE FOR RESTORATION OF RIGHTS TO VOTE; PRESCRIBING DUTIES TO THE CORRECTIONS DEPARTMENT AND THE SECRETARY OF STATE;←HJC AMENDING HJC→AND REPEALING←HJC HJC→, REPEALING AND ENACTING←HJC SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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SECTION 1. Section 31-21-5 NMSA 1978 (being Laws 1978, Chapter 41, Section 1, as amended) is amended to read:

"31-21-5. DEFINITIONS.--As used in the Probation and Parole Act:

A. "probation" means the procedure under which an adult defendant, found guilty of a crime upon verdict or plea, is released by the court without imprisonment under a suspended or deferred sentence and subject to conditions;

B. "parole" means the release to the community of an inmate of an institution by decision of the board or by operation of law, subject to conditions imposed by the board and to its supervision;

C. "institution" means the state penitentiary and any other similar state institution hereinafter created;

D. "board" means the parole board;

E. "director" means the director of the [~~field services~~] adult probation and parole division of the corrections department or any employee designated by [~~him~~] the director; [~~and~~]

F. "adult" means any person convicted of a crime by a district court;

G. "geriatric inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) is fifty-five years of age or older;

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(3) suffers from a debilitating and chronic infirmity, illness or disease related to aging; and

(4) does not constitute a danger to the person's own self or to society at the time of review;

H. "permanently incapacitated inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) by reason of an existing medical condition is permanently and irreversibly physically incapacitated; and

(3) does not constitute a danger to the person's own self or to society at the time of review; and

I. "terminally ill inmate" means a person who:

(1) is serving a sentence and is confined in a prison or other correctional institution under the control of the corrections department;

(2) has an incurable condition caused by illness or disease that will, within reasonable medical judgment, produce death within six months; and

(3) does not constitute a danger to the person's own self or to society at the time of review."

SECTION 2. Section 31-21-17.1 NMSA 1978 (being Laws 1994, Chapter 21, Section 2) is amended to read:

"31-21-17.1. [~~ADMINISTRATION BY~~] MEDICAL OR GERIATRIC PAROLE--PROCEDURES--DUTIES OF THE CORRECTIONS DEPARTMENT--

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DUTIES OF THE BOARD.--

A. The corrections department shall promulgate rules and implement a medical and geriatric parole program, including the application form for medical or geriatric parole.

B. Inmates who are geriatric, permanently incapacitated or terminally ill may seek parole consideration upon written application to the board or consent to submission of their application by and through a family member, attorney or corrections department care provider. When an inmate is physically or mentally incapable of knowingly and voluntarily consenting to submission of an application due to mental or physical infirmity, a family member, attorney, corrections department care provider or other individual with a power of attorney may submit the application on an inmate's behalf.

C. Applications for medical or geriatric parole shall be submitted to the inmate's classification officer. A classification officer who receives an application shall review the application, make a recommendation, attach any relevant documentation and forward the application package to the appropriate authority as defined by corrections department rule.

D. A classification officer shall provide an inmate over the age of fifty-five with a copy of the medical and geriatric parole policy and any other applicable forms at least once a year. An inmate arriving at a long-term care or geriatric unit managed by the corrections department or placed

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by the corrections department into long-term care or a facility not managed by the department shall be provided with a copy of the medical and geriatric parole policy, written in the inmate's preferred language, during orientation. A copy of the medical and geriatric parole policy shall be placed and maintained in the law library at each institution of the corrections department.

E. The corrections department shall identify geriatric, permanently incapacitated and terminally ill inmates, notify those inmates of the opportunity to apply for medical or geriatric parole and recommend the release of those inmates who are eligible for [geriatric or] medical or geriatric parole. [based on rules established by the board. The department shall forward an application and documentation in support of parole eligibility to the board within thirty days of receipt of an application from an inmate. The documentation shall include information concerning the inmate's age, medical history and prognosis, institutional behavior and adjustment and criminal history. The inmate or inmate's representative may submit an application to the board]

F. The corrections department shall determine whether to recommend an inmate for medical or geriatric parole and make any recommendations to the board no later than thirty days after receipt of the application by the classification officer. All applications received by the department shall be processed and forwarded to the board. The recommendation shall

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include the inmate's age, medical history and prognosis and, if applicable, institutional behavior, adjustment and any evidence suggesting rehabilitation during incarceration. When the department recommends an inmate for medical or geriatric parole, the director shall submit a statement to the board that the inmate's release is not incompatible with the welfare of society. In the event that the department is unable to make a determination of recommendation for medical or geriatric parole within thirty days, the department shall document in writing any justification for the delay.

G. A rebuttable presumption that an inmate does not constitute a danger to the inmate's self or to society and is therefore eligible for medical or geriatric parole is established if the inmate:

(1) is fifty-five years of age or older and suffers from a debilitating or chronic infirmity, illness or disease related to aging;

(2) by reason of an existing medical condition, is permanently and irreversibly physically incapacitated; or

(3) has an incurable condition caused by illness or disease that would, within reasonable medical judgment, produce death within six months.

H. An inmate who has not served the inmate's minimum sentence may be considered eligible for parole under the medical and geriatric parole program. Medical and

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geriatric parole shall be in addition to any other parole for which a geriatric, permanently incapacitated or terminally ill inmate may be eligible.

I. An inmate convicted of first degree murder shall not be considered eligible for medical or geriatric parole.

J. When considering an inmate for medical or geriatric parole, the director may request that reasonable medical and mental health examinations be conducted; provided that the examinations do not cause delay in the processing time of applications required by this section.

K. When determining an inmate's eligibility for medical or geriatric parole, the director shall consider the totality of the circumstances, including:

(1) the inmate's age;

(2) the severity of the inmate's illness, disease or infirmity;

(3) a comprehensive health evaluation of the inmate;

(4) the inmate's institutional behavior, including evidence indicating rehabilitation;

(5) the inmate's current level of risk for violence; and

(6) any alternative to maintaining the geriatric, permanently incapacitated or terminally ill inmate in a traditional setting.

L. The parole term of a geriatric, permanently

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incapacitated or terminally ill inmate on medical or geriatric parole shall be for the remainder of the inmate's basic sentence and parole without diminution of sentence for good behavior.

M. The board shall release an inmate on medical or geriatric parole upon recommendation from the director unless the board finds by clear and convincing evidence that the inmate's release is incompatible with the welfare of society and states in writing its reason for the finding. The board may consider the totality of the circumstances, including an inmate's criminal history, but shall not deny medical or geriatric parole solely because of the nature of the charge resulting in the inmate's conviction or the inmate's criminal history.

N. Upon receipt of an application and recommendation and supporting documentation from the corrections department for medical or geriatric parole, the board shall review the documentation, schedule a hearing and issue a decision within fifteen days. In the event that a hearing cannot be scheduled and a decision issued within fifteen days, the board shall document in writing any justification for the delay. If an inmate is denied parole, the board shall notify the inmate and provide service of the copy of the written decision. A copy of the decision shall be sent to the secretary of corrections and the warden of the facility in which the inmate resides.

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O. In the event that the inmate is a terminally ill inmate, the corrections department shall determine whether to recommend an inmate for medical or geriatric parole within fifteen days of the receipt of the inmate's application by the classification officer, and the board shall issue a decision within seven days. In the event that the department is unable to determine whether to recommend an inmate for medical or geriatric parole within fifteen days pursuant to this subsection, the department or the board shall document any justification for the delay in writing.

P. An inmate who has been denied parole pursuant to the provisions of this section may reapply if additional information is received or if the inmate's condition so warrants.

Q. Pursuant to Section 39-3-1.1 NMSA 1978, an inmate whose decision is denied by the board pursuant to the provisions of this section may appeal the board's decision in the district court in the jurisdiction where the sentence was imposed. When an inmate is physically or mentally incapable of knowingly and voluntarily consenting to submission of an appeal because of a mental or physical infirmity, a family member, attorney, corrections department health care provider or other individual with a power of attorney may submit an appeal on the inmate's behalf. The notice of appeal shall include a statement of any applicable appellate issues. No later than forty-eight hours after the filing of the notice of appeal with

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the board, the board shall file the record on appeal with the district court, including any applicable appellee response. The district court shall rule on the appeal no later than seventy-two hours after the record on appeal is filed."

HJC→SECTION 3. Section 31-13-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-14, as amended) is repealed and a new Section 31-13-1 NMSA 1978 is enacted to read:

"31-13-1. [NEW MATERIAL] SHORT TITLE--POST-CONVICTION RIGHTS RESTORATION ACT.--Chapter 31, Article 13 NMSA 1978 may be cited as the "Post-Conviction Rights Restoration Act"."

SECTION 4. A new Section 31-13-2 NMSA 1978 is enacted to read:

"31-13-2. [NEW MATERIAL] DEFINITIONS.--As used in the Post-Conviction Rights Restoration Act:

A. "certificate of restoration of rights" means a certificate issued under the hand and seal of the governor of this state that operates to restore the rights of a felon within the state of New Mexico;

B. "convicted" or "conviction" means an adjudication of guilt by a court of competent jurisdiction, but does not include an adjudication of guilt:

- (1) that has been overturned on appeal;
- (2) that has been expunged;
- (3) for which the person convicted has received a pardon or whose rights have otherwise been restored;

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or

(4) by a court other than the state courts of New Mexico if the judgment was rendered under a judicial system that does not provide impartial tribunals or procedures consistent with requirements of due process of law compatible with those guaranteed criminal defendants in this state;

C. "office of trust" means an office of the state or a political subdivision of the state for which a person holding or serving in that office is subject to:

- (1) election;
- (2) confirmation by the senate;
- (3) impeachment by the house of

representatives; or

(4) discipline by the judicial standards commission; and

D. "pardon" means nullification of punishment and other legal consequences of a crime granted pursuant to the laws of the jurisdiction governing the court system in which the crime was adjudicated."

SECTION 5. A new Section 31-13-3 NMSA 1978 is enacted to read:

"31-13-3. [NEW MATERIAL] LOSS AND RESTORATION OF RIGHTS-- CONVICTION OF CRIMES CLASSIFIED AS FELONIES IN OTHER JURISDICTIONS.--Any right that is lost as a result of a conviction is automatically restored if the crime:

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A. is classified as a felony at the time of the adjudication by the jurisdiction governing the court system that adjudicated the offense; and

B. is not classified or ceases to be classified as a felony pursuant to the laws of this state."

SECTION 6. A new Section 31-13-4 NMSA 1978 is enacted to read:

"31-13-4. [NEW MATERIAL] PARDONS--CERTIFICATES OF RESTORATION OF RIGHTS.--Except as otherwise provided in the Post-Conviction Rights Restoration Act, the rights of a person to serve on a jury, to vote and to hold an office of trust if convicted of a felony crime by:

A. a court of this state are restored when the person receives a pardon or other restoration of rights pursuant to the laws of this state, including the restoration of rights by operation of law resulting from the satisfaction of conditions of deferment and dismissal of all charges of a person with a deferred sentence, or when the governor of this state issues a certificate of restoration of rights;

B. a court of another state are restored when the person receives a pardon or other restoration of rights pursuant to the laws of that state or when the governor of this state issues a certificate of restoration of rights;

C. a federal court are restored when the person receives a pardon or other restoration of rights pursuant to

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federal law or when the governor of this state issues a certificate of restoration of rights; or

D. a court of a foreign country or of a jurisdiction within that country are restored when the person receives a pardon or other restoration of rights pursuant to the laws of that country or jurisdiction within that country or when the governor of this state issues a certificate of restoration of rights."

SECTION 7. A new Section 31-13-5 NMSA 1978 is enacted to read:

"31-13-5. [NEW MATERIAL] LOSS AND RESTORATION OF THE RIGHT TO SERVE ON A JURY.--A person who is convicted is ineligible to serve on a jury in this state upon a felony conviction. That person's right to serve on a jury is restored as provided pursuant to Section 31-13-3 NMSA 1978 or when that person:

A. completes all conditions of deferment imposed as part of a deferred sentence;

B. completes all conditions of the sentence imposed for the felony, including conditions of probation and parole;

C. receives a pardon or other restoration of rights pursuant to the laws of the jurisdiction governing the court that adjudicated the offense; or

D. is issued a certificate of restoration of rights by the governor of this state."

SECTION 8. A new Section 31-13-6 NMSA 1978 is enacted to read:

"31-13-6. [NEW MATERIAL] LOSS AND RESTORATION OF THE RIGHT TO VOTE.--A person is ineligible to vote if that person is imprisoned for the conviction of a felony in a correctional facility under the jurisdiction of a state, the United States of America or a foreign government. That person's right to vote is restored as provided pursuant to Section 31-13-3 NMSA 1978 or when that person:

A. is released from the correctional facility where that person was imprisoned for conviction of the felony;

B. receives a pardon or other restoration of rights pursuant to the laws of the jurisdiction governing the court system that adjudicated the offense; or

C. is issued a certificate of restoration of rights by the governor of this state."

SECTION 9. A new Section 31-13-7 NMSA 1978 is enacted to read:

"31-13-7. [NEW MATERIAL] LOSS AND RESTORATION OF THE RIGHT TO HOLD AN OFFICE OF TRUST.--A person is ineligible to hold an office of trust if that person is convicted of a felony. That person's right to hold an office of trust is restored as provided pursuant to Section 31-13-3 NMSA 1978 or when that person:

A. receives a restoration of rights by operation of

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law resulting from the satisfaction of conditions of deferment and dismissal of all charges of a person with a deferred sentence pursuant to the laws of this state;

B. receives a pardon or other restoration of rights pursuant to the laws of the jurisdiction governing the court that adjudicated the offense; or

C. is issued a certificate of restoration of rights by the governor of this state."

SECTION 10. Section 1-4-24 NMSA 1978 (being Laws 1969, Chapter 240, Section 80, as amended) is amended to read:

"1-4-24. CANCELLATION OF REGISTRATION--COUNTY CLERK--  
GROUNDS.--The county clerk shall cancel certificates of registration for the following reasons:

A. death of the voter;

B. ~~[a felony conviction]~~ imprisonment of the voter in a correctional facility for the conviction of a felony;

C. at the request of the voter; or

D. at the direction of the board of registration."

SECTION 11. Section 1-4-27.1 NMSA 1978 (being Laws 2001, Chapter 46, Section 1, as amended) is repealed and a new Section 1-4-27.1 NMSA 1978 is enacted to read:

"1-4-27.1. [NEW MATERIAL] INMATES INELIGIBLE TO VOTE OR REGISTER TO VOTE--ELIGIBILITY TO VOTE AND REGISTER TO VOTE UPON RELEASE.--

A. A voter is ineligible to vote while imprisoned

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in a correctional facility as part of a sentence for a felony conviction. Except as provided in this section, a qualified elector is ineligible to register to vote while imprisoned in a correctional facility as part of a sentence for a felony conviction.

B. At the time an inmate is preparing for release from a state correctional facility, if the inmate is a voter or qualified elector, the inmate shall be given an opportunity to register to vote, or update an existing registration, by means of a transaction with the motor vehicle division of the taxation and revenue department prior to the inmate's release from custody. If the inmate does not conduct a transaction with the motor vehicle division prior to the inmate's release from custody, the corrections department shall provide the inmate an opportunity to register to vote or update an existing registration by means of an online portal provided by the secretary of state or, if such a portal is not available, by means of a paper registration form.

C. The voter registration of a voter who is an inmate may be canceled in any manner provided for in Chapter 1, Article 4 NMSA 1978. In addition to being ineligible to vote, a voter who is an inmate shall be considered to have changed the voter's address from the voter's precinct of registration, pursuant to Section 1-4-28 NMSA 1978, and shall follow the procedures of that section; provided that the secretary of

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state shall not send a confirmation mailing to a voter who is an inmate.

D. The corrections department shall deliver to the secretary of state information and data necessary to carry out the provisions of this section. The secretary of state shall maintain current information in the voter registration electronic management system on the ineligibility status of an inmate to vote or register to vote pursuant to this section, as well as an inmate's eligibility status to vote upon release and to register to vote or update an existing voter registration while preparing for release. Notwithstanding a person's status in the voter registration electronic management system, a voter or a qualified elector who appears personally before a county clerk, the clerk's authorized representative or a precinct board member is presumed eligible to vote or register to vote pursuant to the provisions of this section."

SECTION 12. Section 38-5-1 NMSA 1978 (being Laws 1969, Chapter 222, Section 1, as amended) is amended to read:

"38-5-1. QUALIFICATION OF JURORS.--~~[A.]~~ A person who is at least eighteen years of age, a United States citizen, a resident of New Mexico residing in the county for which a jury may be convened is eligible and may be summoned for service as a juror by the courts, unless the person is incapable of rendering jury service because of:

~~[(-)]~~ A. physical or mental illness or infirmity;

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[or

~~(2)] B. undue or extreme physical or financial hardship;~~

~~[B. A person who was convicted of a felony and who meets all other requirements for eligibility may be summoned for jury service if the person has successfully completed all conditions of the sentence imposed for the felony, including conditions for probation or parole.] or~~

C. conviction of a felony, except as otherwise provided by the Post-Conviction Rights Restoration Act."←HJC

SECTION HJC→~~3.~~←HJC HJC→13.←HJC REPEAL.--Section 31-21-25.1 NMSA 1978 (being Laws 1994, Chapter 21, Section 3) is repealed.

HJC→SECTION 13. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.←HJC