

LFC Requester: _____

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

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{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

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 **Amendment** _____
Correction _____ **Substitute** _____

Date 2/1/2024
Bill No: Senate Bill 276-280

Sponsor: Antonio Maestas, Bill B. O’Neill **Agency Name and Code** Law Offices of the Public Defender
Short Title: Probation and Parole Sentence **Number:** - 280
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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

BILL SUMMARY

Synopsis:

Section 1 of SB 276 would amend Subsection D of Section 31-18-15 NMSA 1978, to remove the parole requirement when an individual is released from imprisonment if the individual would already be serving a concurrent period of probation on a partially suspended sentence. In other words, it prevents “dual supervision” on both probation and parole.

Section 2 of SB 276 would amend multiple subsections of Section 31-20-5 NMSC 1978:

(1) Subsection A would be amended to remove the specific five-year limitation on a period of probation imposed by a district court and to establish a general limitation that a court may not impose a period of parole that would exceed the court’s jurisdiction;

(2) Subsection B would be amended to conform with Section 1 of the bill, providing that a defendant that is required to serve probation upon release from incarceration shall not be required to serve a period of parole.

FISCAL IMPLICATIONS

The exact fiscal impact to government resources is unclear, although the proposed amendments would appear to eliminate some redundancy that currently exists. The current practice appears to require or permit the revocation of both parole and probation for a defendant, who is concurrently serving a period of parole and a period of probation. This apparent redundancy may be resulting in a waste of government resources though excessive or unnecessary processes imposed upon the Law Offices of the Public Defender (LOPD) as well as other governmental departments and agencies. At this time, such speculation is all that is possible. An assessment would be necessary after implementation to more accurately determine the actual impact and performance implications.

SIGNIFICANT ISSUES

It is important to note that under dual supervision, district courts currently have probation jurisdiction the entire time a person is concurrently on parole. This means that currently, if a person violates their conditions, they face potential sanctions in both courts (for probation)

and the Parole Board (for parole). This bill would prevent “double” revocation by both adjudicatory bodies, but nothing in SB 276 changes the judicial process for adjudicating or punishing probation violations. So, district courts would continue to have the ability to fully revoke probation and impose the entire balance of a suspended sentence for any violation of probation conditions, just as they do now.

The title of SB 276 suggests an intent to establish that probation shall be served instead of parole when both would be running concurrently. However, the phrase “shall not be required” could be construed as discretionary to *permit* the imposition of a period of parole although it is not *required*, despite the amendment to Subsection B of Section 31-20-5 which suggests that the prohibition is not discretionary. This apparent tension may result in, or require, litigation seeking a judicial construction.

The title of SB 276 further suggests an intent to limit a courts authority to imposed a period of parole beyond the maximum allowable incarceration time permitted for each conviction. However, the proposed language imposing a general limitation based on “the jurisdiction of the court” is vague so as to allow for multiple interpretations depending on the unique circumstances presented. This could also require litigation to clarify what limitation is actually imposed.

By removing the five-year cap, if a suspended sentence is more than five years, the amendment would actually *extend* the court’s probation jurisdiction to the full duration of the suspended sentence, which in some cases is decades long. To accomplish the goal of a five-year cap, but not longer than the suspended sentence, Section 31-20-5 would be better amended as follows (beginning with page 6, line 9 of SB 276):

Except for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation [~~for district court~~] shall not exceed five years and the total period of probation [~~for the magistrate or metropolitan courts~~] shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.

This maintains the five-year cap, and applies the limitation to allowable incarceration time to all probation terms.

PERFORMANCE IMPLICATIONS

The impact the proposed amendment would have on incarceration rates and recidivism rates is also unclear based only on the review of the proposed amendments. However, the elimination of apparent redundancies within the system may allow LOPD employees to more effectively and efficiently direct their limited time and resources. At this time, such speculation is all that is possible. An assessment would be necessary after implementation to more accurately determine the actual impact and performance implications.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

Analyst is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, and 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.

If there is a desire to address the identified apparent tension in SB 276 discussed above, some of the tension might be alleviated by (1) replacing the term “required” with the term “imposed” on page 4, line 16, and (2) inserting the word “served” between the words “be” and “concurrent” on page 4, lines 17-18 of the proposed amendment to 31-18-5(D) in *Section 1* of SB 276.

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS