

<b>LFC Requester:</b>	<b>Scott Sanchez</b>
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## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### **SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 02/13/2025

*Check all that apply:*

**Bill Number:** HB385

Original X      Correction         
Amendment             Substitute       

**Sponsor:** Rep. Stefani Lord, Rep. John Block

**Agency Name and Code Number:** 305 – New Mexico Department of Justice

**Short Title:** CHEMICAL CASTRATION OF SOME SEX OFFENDERS

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### **SECTION II: FISCAL IMPACT**

#### **APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### **REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

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

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<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**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator's request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

### **BILL SUMMARY**

#### **Synopsis:**

NMSA 1978 Sections 31-21-3 through 31-21-19 are known as the Probation and Parole Act. HB 385 proposes amendments to Section 31-21-10.1 which would require chemical castration treatment as a condition of parole for sex offenders.

Section 1 proposes amendments that would restructure Section 31-21-10.1(A) and add new material as Section 31-21-10.1(A)(2) that would require a sex offender sentenced to incarceration in a facility designated by the corrections department "to undergo chemical castration treatment pursuant to Section 31-21-10.3 NMSA 1978 as a condition of parole." Sex offenders are those convicted of any of the offenses enumerated in Section 31-21-10.1(I).

Section 2 proposes the new section, Section 31-21-10.3, and includes a definition for "chemical castration treatment," which "means the use of hormonal drugs such as medroxyprogesterone acetate or a chemical equivalent to reduce sexual violence recidivism."

Section 2 requires the district court inform the offender "about the effect of chemical castration treatment and any side effects that may result from the treatment," and that the offender "sign a written acknowledgment of receipt of the information." The treatment would be required to begin no later than one month prior to the offender's release from incarceration. If the offender is incarcerated, the corrections department would be responsible for administering treatment, whereas if the offender is released from the correction department's custody during their term of parole, the parole officer would inform the offender about where to receive treatment. The offender would be required to authorize the corrections department to release medical records relating to the offender's treatment to the parole board. The offender would be responsible for costs associated with the treatment, but if unable to pay may not be denied parole, and the offender would be required to continue receiving the treatment until the parole board determines it is no longer necessary. A refusal of treatment would be a parole violation, and the violator would be remanded to the custody of the corrections department for the remainder of the sentence from which the offender was paroled.

### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

N/A

## SIGNIFICANT ISSUES

HB 385 will likely be subject to scrutiny under the 8th amendment of the U.S. Constitution, which prohibits cruel and unusual punishment. (“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”) The New Mexico Constitution includes the same restriction. *See* N.M. Const. art. II, § 13.

The New Mexico Supreme Court has stated that the state constitution’s prohibition against cruel and unusual punishment affords greater protection than its federal counterpart. (“ . . . Article II, Section 18, ensuring due process, and Article II, Section 13, prohibiting cruel and unusual punishment, have been interpreted as providing greater protection than their federal counterparts.” *Montoya v. Ulibarri*, 2007-NMSC-035, ¶ 22, 142 N.M. 89, citing *State v. Vallejos*, 1997-NMSC-040, ¶¶ 35–38, 123 N.M. 739 and *State v. Rueda*, 1999-NMCA-033, ¶¶ 9–14, 126 N.M. 738). It is unclear how courts in New Mexico would decide a challenge to this law if it was litigated.

Further, HB 385 would impose chemical castration as a mandatory condition of parole for all sex offender convictions as defined in Section 31-21-10.1(I), as opposed to, for example, chemical castration laws in some other states that are limited based on age of the victim and/or whether the conviction is a first or subsequent conviction. Some other states that have chemical castration laws include California, Iowa, Louisiana, and Alabama; this is not meant to be an exhaustive list. Following are some highlights:

- In California, upon parole certain sex offenders may be ordered to undergo medroxyprogesterone acetate treatment or its chemical equivalent for a first conviction, where the victim is under the age of 13, and shall be required to undergo the treatment upon a subsequent conviction where the victim is under the age of 13. Cal. Penal Code § 645
- In Iowa, upon a first conviction of a “serious sex offense,” as defined in the law, a person may “be required to undergo medroxyprogesterone acetate treatment as part of any conditions of release imposed by the court or the board of parole;” upon a subsequent conviction, “the court or the board of parole shall require the person to undergo medroxyprogesterone acetate or other approved pharmaceutical agent treatment as a condition of release, unless, after an appropriate assessment, the court or board determines that the treatment would not be effective” Iowa Code § 903B.10(1)
- In Louisiana , upon a first conviction of certain enumerated offenses, a court may sentence a sex offender to undergo medroxyprogesterone acetate treatment; and upon a subsequent conviction the court shall sentence that sex offender to undergo the treatment; an order sentencing the offender to the treatment “shall be contingent upon a determination by a court appointed medical expert that the defendant is an appropriate candidate for treatment” and the order shall specify the duration of treatment; La. R.S. 14:43.6
- In Alabama, persons otherwise eligible for parole who are convicted of certain

enumerated sex offenses where the victim is under 13 years of age shall be required to undergo chemical castration treatment as a condition of parole; Ala. Code § 15-22-27.4

HB 385 shares some similarities with Alabama's law. For example, pursuant to Ala. Code § 15-22-27.4, the offender shall pay for the cost of treatment, but shall not be denied parole based on inability to pay, and the court is to inform the offender of the effect of the treatment and potential side effects. However, if the person, upon application, claims indigency, the person is to be brought before a court for a determination of indigency and the district attorney may request a periodic review of indigency status by motion. The offender may not be forced to receive the treatment, but a refusal is a violation of parole and the offender is to be remanded to custody for the remainder of the offender's sentence from which the offender was paroled.

HB 385 would apply to a broad range of crimes, including those that do not have mandatory incarceration terms. A conviction of these crimes would not necessarily result in an incarceration sentence requiring a parole term. Thus, it is unclear what the legislative intent is for violations of sex offender crimes that do not result in a term of parole.

### **PERFORMANCE IMPLICATIONS**

None.

### **ADMINISTRATIVE IMPLICATIONS**

None.

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

None.

### **TECHNICAL ISSUES**

None.

### **OTHER SUBSTANTIVE ISSUES**

Some sex offenders are female. Many studies evaluating medroxyprogesterone acetate's effect on sexual recidivism dealt with male offenders. It is unclear whether medroxyprogesterone acetate or an equivalent would reduce sexual recidivism for women.

HB 385 requires an offender to authorize the corrections department to release medical records relating to the offender's treatment to the parole board. Since the corrections department is to administer treatment if the offender is incarcerated, this could potentially be interpreted as limiting the records that the offender must authorize release of to only those records

Additionally, there is no direction as what entity would be responsible for determining whether an offender has an inability to pay for the treatment and whether that may be revisited. Since a person placed on sex offender parole could be on parole anywhere from five years to life, it may be worth considering providing some direction about revisiting inability to pay.

### **ALTERNATIVES**

None.

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

Status quo.

**AMENDMENTS**

None.