

**Bill Analysis 2019 Regular Session****SPONSOR:** Representative Antonio Maestas, Gail Chasey and Senator Sander Rue**SHORT TITLE:** Probation and Parole Good Behavior

**SYNOPSIS OF BILL:** The bill makes substantial changes to probation and parole, including: 1) requiring that the Corrections Department operate probation and parole supervision based on a validated risk and needs assessment and best practices such as cognitive-behavioral programming; 2) creates two new sections of the Probation and Parole Act, concerning incentives and sanctions for technical violations of probation or parole and technical violation hearings; 3) creates a framework for medical and geriatric parole; and, 4) adds language concerning probation revocation hearings for non-technical violations and provides that if a non-technical violation is established at the hearing, the sanction for the violation shall be commensurate with the seriousness of the violation and not a punishment for the offense for which the probationer was placed on probation, and that the court may continue or revoke the probation, impose detention for up to 90 days, or any other order it sees fit.

**STRENGTHS:** Legislative Finance Committee issued a report in late 2018 detailing findings that a significant percentage of New Mexico inmates were incarcerated on probation or parole violations, as opposed to new crimes.<sup>1</sup> Of those violations, the vast majority were for “technical violations” such as a dirty drug test or missing an appointment. By implementing an alternative incentive and sanction program, the number of people sent back to prison on technical violations should be reduced and the underlying issues (i.e., substance abuse) may be better addressed outside of the correctional system. Medical and geriatric parole is important not only for compassionate release, but also for the significant savings that could be realized by New Mexico taxpayers by not having the Corrections Department providing significant health care to individuals who no longer pose a risk to the community.

**CONCERNS:** From an ethical and accuracy perspective, the use of risk assessment instruments (RAIs) in decision-making at the pretrial stage or in probation/parole decisions has the potential to amplify and perpetuate existing social inequalities. Most—if not all—RAIs ascribe higher degrees of risk to individuals with criminal histories (e.g., prior convictions, prior jail time), as well as those with mental health concerns and challenges regarding substance abuse. While acknowledging that it may be difficult to find data points that are not contaminated by racial bias, the data points relied upon in many existing RAIs—including age at first arrest or prior justice system involvement—represent particularly strong proxies for race. Due to well-documented and unwarranted disparities in all stages of the criminal justice system, people of color are much more likely to have criminal histories.<sup>2</sup>

The algorithms underlying many risk assessment instruments, including the RAI used by the Department of Corrections (COMPAS) are considered proprietary and some courts have refused to release the formulas used to prepare a risk score to defendants, their counsel, or incarcerated people before a parole board. This level of secrecy presents potential serious constitutional concerns and practically may create a situation where an individual is held pretrial or denied parole based on a formula that is not transparent or even available to him.

Additionally, probationers and parolees should also have the opportunity to have counsel present at any hearings on violations or before the parole board. If additional hearings are required, the public defender should receive adequate funding to provide that counsel.

<b><u>S</u>afer</b>	<b><u>A</u>political</b>	<b><u>F</u>iscally-Responsible</b>	<b><u>E</u>vidence Based</b>	<b>Grade</b>
New Mexico spends millions of dollars incarcerating elderly prisoners who likely pose little or no threat to our communities. That money would be better spent on behavioral health services, substance abuse programs, etc., that are more effective at reducing crime.	N/A	According to a 2018 report from the Pew Charitable Trusts, the percentage of older prisoners nationally has skyrocketed 280% since 1999. <sup>3</sup> In 2008, the Pew Center on the States' Public Safety Performance Project identified the average cost of an older prisoner to be \$70 thousand per year. Accounting for medical inflation, the LFC evaluation estimated the state paid about \$1.1 million in FY18 for geriatric medical costs alone that could have been avoided.	<p>Research conclusively indicates that the likelihood of a person committing a crime decreases dramatically with age. Elderly prisoners are simply less likely to be dangerous should they be paroled.</p> <p>Related to the use of risk assessment instruments, experts point to the need for independent review and auditing of RAIs, both by independent researchers and, especially, by members of directly impacted communities. Community members should be able to ask questions, understand how the tool operates, and demand data around how the tool works prior to and during its implementation and use.<sup>4</sup></p>	<b>B</b>

1. New Mexico Legislative Finance Committee, Program Evaluation: Corrections Department (October 2018), Report 18-09.
2. The Sentencing Project, Report of the Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System (Aug. 2013), retrieved at: <http://sentencingproject.org/wp-content/uploads/2015/12/Race-andJustice-Shadow-Report-ICCPR.pdf>
3. Pew Charitable Trusts, Aging Prison Populations Drive Up Costs (February 2018), retrieved at: <https://www.pewtrusts.org/en/research-and-analysis/articles/2018/02/20/aging-prison-populations-drive-up-costs>.
4. Center on Race, Inequality, and the Law and the ACLU, What Does Fairness Look Like? (October 2018), retrieved at: <http://www.law.nyu.edu/sites/default/files/Final%20Report--ACLU-NYU%20CRIL%20Convening%20on%20Race%20Risk%20Assessment%20%20Fairness.pdf>.