

LFC Requester:

**AGENCY BILL ANALYSIS  
2019 REGULAR SESSION**

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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** March 8, 2019

**Bill No:** HB564aa

<b>Sponsor:</b>	Judiciary Committee	<b>Agency Name and Code</b>	Administrative Office of the
<b>Short</b>	Amendment (2 <sup>nd</sup> )	<b>Number:</b>	District Attorneys (AODA) 264
<b>Title:</b>	Probation & Parole Good Behavior	<b>Person Writing</b>	<u>Gail MacQuesten</u>
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY19	FY20		
0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY19	FY20	FY21		
0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY19</b>	<b>FY20</b>	<b>FY21</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>	0	0	0	0	n/a	n/a

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: none found

Duplicates/Relates to Appropriation in the General Appropriation Act: none found

**SECTION III: NARRATIVE**

**BILL SUMMARY**

Synopsis:

The second Judiciary Committee amendment to HB564 (HB564aa) strikes the first amendments made by the Judiciary Committee, and instead makes the following changes to HB564.

Section 1

In Section 1, HB564aa restores language that the original bill deleted, providing that when the court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension “if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish.”

HB564aa also amends subsection E of Section 1, regarding “good time” credit on supervised probation, to limit eligibility to persons placed on supervised probation by a district or magistrate court judge. HB564aa also excludes from “good time” eligibility persons convicted of certain sex offenses and serious violent offenses.

Section 5

HB564aa strikes Section 5 of the original bill, and inserts a new Section 5, which amends Section 31-21-10 NMSA 1978 “Parole Authority and Procedure” to:

- Remove language describing the specific information concerning an inmate the board is to consider prior to ordering parole of an inmate sentenced to life imprisonment (so the board is to consider “all pertinent information”);
- Require the board, after a parole hearing for an inmate sentenced to life imprisonment, to enter specific findings in support of its decision and deliver the findings in writing to the inmate;
- Restrict the requirement that an inmate who was convicted of a first, second or third degree felony serve a two-year period of parole to those inmates who have served a sentence “that exceeds one year or [who have] agreed and been ordered to serve a period of parole by the court;”
- Restrict the requirement that an inmate convicted of a fourth degree felony serve a one-year period of parole to those inmates who have served a sentence “that exceeds

- one year or [who have] been ordered to serve a period of parole by the court;” and
- Require the board to “consult a validated risk and needs assessment, if provided by the correction department, when deciding what conditions of parole to impose.”

### Section 6

HB564aa amends Subsection C of Section 31-21-13.1 NMSA 1978, “Intensive Supervision Programs” to

- Restore this language (which the original bill deleted): “A judge has discretion to impose an intensive supervision program for an individual, regardless of recommendations made by the adult probation and parole division.” However, HB564aa limits that power by adding “only if a validated risk and needs assessment has been provided to the judge and considered in the decision to impose an intensive supervision program;” and
- Delete language proposed in the original bill that would have limited eligibility for intensive supervision programs to inmates eligible for parole “who are assessed as high risk on a validated risk and needs assessment.”

### Section 8

HB564aa amends Section 31-21-15 NMSA 1978, “Probation Violations.” to clarify the consequences which follow after a court finds a non-technical violation at a probation revocation hearing.

### New Section 13

HB564aa adds a new applicability section, providing that Section 5 of the act (regarding “good time”) applies to a person serving a term of incarceration on January 1, 2020 and to a person whose term of incarceration commences on or after January 1, 2020.”

### New Section 14

HB564aa adds a new effective date provision, stating that the effective date of the provisions of this act is January 1, 2020.

## **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.

There are no direct fiscal implications for the district attorneys.

## **SIGNIFICANT ISSUES**

HB564aa makes changes that address some of the concerns expressed about the original bill.

### Section 1

Restoring the language in Section 1 that provides that the court shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension “if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish” gives the Corrections Department the ability to argue that it is not feasible for it to supervise misdemeanor offenders.

Limiting the “good time” provision of Section 1 to persons placed on supervised probation by a district or magistrate court judge will allow the Bernalillo County Metropolitan Court to continue its in-house probation supervision program.

Excluding from “good time” eligibility persons convicted of certain sex offenses and serious violent offenses protects the public by keeping those persons on supervised probation. It also avoids a potential conflict with the statute requiring sex offenders to serve five years of supervised probation.

### Section 5

The first Judiciary Committee amendment to HB564 would have required parole for an inmate sentenced to life imprisonment after the inmate served thirty years of the sentence, unless the board made a finding that the inmate is unable or unwilling to fulfill the obligations of a law-abiding citizen. This second amendment to HB564 removes that language. Instead, such an inmate becomes eligible for a parole hearing after thirty years. Before it can grant parole, the board is to consider all pertinent information, make a finding that a parole is in the best interest of society and the inmate, and make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen. There is no presumption that parole will be granted unless adverse findings are made.

### Section 6

HB564aa restores language that the original bill deleted that gives judges the discretion to impose an intensive supervision program for an individual, regardless of recommendations made by the adult probation and parole division. It limits that discretion, however, by adding language that allows the judge to exercise that discretion only if a validated risk and needs assessment has been provided to the judge and considered in the decision to impose an intensive supervision program. HB564aa therefore still limits judicial discretion in imposing intensive supervision. And it hinges that discretion on the existence of a validated risk and needs assessment (which may not be available). It does not take into account what that validated risk and needs assessment states. A judge only has to “consider” the assessment (even if the assessment suggests that no intensive supervision is required) in order to have discretion to require intensive supervision.

HB564aa also deletes language in the original bill that would have limited eligibility for intensive supervision programs to inmates eligible for parole “who are assessed as high risk on a validated risk and needs assessment.” Because validated risk and needs assessments are not always available, this provision could have eliminated the use of intensive supervision programs for inmates who need such supervision.

### Sections 13 and 14

These sections provide an effective date of January 1, 2020, and provide that Section 5 of the act (regarding “good time”) applies to a person serving a term of incarceration on January 1, 2020

and to a person whose term of incarceration starts on or after January 1, 2020. The original bill did not have an effective date provision or an applicability provision.

## **PERFORMANCE IMPLICATIONS**

To the extent HB564aa tailors probation and parole to promote a defendant's reintegration into society, it should reduce the risk that the person will re-offend and re-enter the criminal justice system.

## **ADMINISTRATIVE IMPLICATIONS**

There are no significant administrative implications for the district attorneys.

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

There are no bills that relate directly to the amendments made by HB564aa.

## **TECHNICAL ISSUES**

None noted.

## **OTHER SUBSTANTIVE ISSUES**

None found.

## **ALTERNATIVES**

None proposed.

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

Status quo.

## **AMENDMENTS**

None proposed.