

1 HOUSE BILL 564

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

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5 and Richard C. Martinez
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10 AN ACT

11 RELATING TO PROBATION AND PAROLE; PROVIDING CLARIFICATION AND
12 GUIDANCE FOR PROBATION AND PAROLE; ALLOWING FOR A PERSON ON
13 PROBATION TO HAVE THE TIME REQUIRED FOR PROBATION TO BE
14 DECREASED FOR GOOD BEHAVIOR; REPEALING SECTION 31-21-25.1 NMSA
15 1978 (BEING LAWS 1994, CHAPTER 21, SECTION 3).
16

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

18 SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
19 Chapter 303, Section 29-17, as amended) is amended to read:

20 "31-20-5. PLACING DEFENDANT ON PROBATION.--

21 A. The purpose of probation is to enforce victim
22 restitution, hold persons accountable for their criminal
23 conduct, promote a person's reintegration into law-abiding
24 society and reduce the risks that the person will commit new
25 offenses. When a person has been convicted of a crime for

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1 which a sentence of imprisonment is authorized and when the
2 [~~magistrate, metropolitan or district~~] court has deferred or
3 suspended sentence, it shall order the defendant to be placed
4 on probation for all or some portion of the period of deferment
5 or suspension [~~if the defendant is in need of supervision,~~
6 ~~guidance or direction that is feasible for the corrections~~
7 ~~department to furnish~~].

8 B. Except for sex offenders as provided in Section
9 31-20-5.2 NMSA 1978, the total period of probation for district
10 court shall not exceed five years and the total period of
11 probation for the magistrate or metropolitan courts shall be no
12 longer than the maximum allowable incarceration time for the
13 offense at the time of sentencing or as otherwise provided by
14 law.

15 C. The court shall consult a validated risk and
16 needs assessment, if provided by the corrections department,
17 when deciding what conditions of probation to impose.

18 ~~[B-]~~ D. If a defendant is required to serve a
19 period of probation subsequent to a period of incarceration:

20 (1) the period of probation shall be served
21 subsequent to any required period of parole, with the time
22 served on parole credited as time served on the period of
23 probation and the conditions of probation imposed by the court
24 deemed as additional conditions of parole; and

25 (2) [~~in the event that~~] if the defendant

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1 violates any condition of that parole and the violation is not
2 sanctioned pursuant to the provisions of Section 10 of this
3 2019 act, the parole board shall cause ~~[him]~~ the defendant to
4 be brought before it pursuant to the provisions of Section
5 31-21-14 NMSA 1978 and may make any disposition authorized
6 pursuant to that section and, if parole is revoked, the period
7 of parole served in the custody of a correctional facility
8 shall not be credited as time served on probation.

9 E. A person who has been placed on supervised
10 probation as provided for in this section shall, after one year
11 spent on supervised probation, have thirty days of the person's
12 supervised probation changed to unsupervised probation for
13 every thirty days served without a probation violation;
14 provided that a person shall not be eligible for a reduction in
15 supervised probation time under this subsection if the person
16 is on parole and has time on parole credited toward probation
17 time pursuant to Paragraph (1) of Subsection D of this
18 section."

19 **SECTION 2.** Section 31-21-4 NMSA 1978 (being Laws 1955,
20 Chapter 232, Section 2, as amended) is amended to read:

21 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

22 A. The Probation and Parole Act shall be liberally
23 construed to the end that the treatment of persons convicted of
24 crime shall take into consideration their individual
25 characteristics, circumstances ~~[needs and potentialities as~~

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1 ~~revealed by case study]~~ and assessment of risk and needs and
2 that such persons shall be dealt with in the community by a
3 uniformly organized system of constructive rehabilitation under
4 probation supervision instead of in an institution or under
5 parole supervision when a period of institutional treatment is
6 deemed essential in the light of the needs of public safety and
7 their own welfare.

8 B. The corrections department shall:

9 (1) operate probation and parole supervision
10 based upon application of a validated risk and needs assessment
11 and principles of effective intervention to reduce criminogenic
12 risk and needs factors;

13 (2) focus supervision resources on the initial
14 period of release or placement on probation;

15 (3) recommend and enforce conditions that
16 include cognitive-behavioral programming to address criminal
17 thinking and address basic needs and transitional requirements,
18 such as housing, employment, medical and mental health services
19 and transportation; and

20 (4) apply a consistent system of incentives
21 and graduated sanctions to promptly respond to positive and
22 negative behavior by probationers and parolees under
23 supervision."

24 **SECTION 3.** Section 31-21-5 NMSA 1978 (being Laws 1978,
25 Chapter 41, Section 1, as amended) is amended to read:

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1 "31-21-5. DEFINITIONS.--As used in the Probation and
2 Parole Act:

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

7 ~~B. "Parole" means the release to the community of~~
8 ~~an inmate of an institution by decision of the board or by~~
9 ~~operation of law, subject to conditions imposed by the board~~
10 ~~and to its supervision;~~

11 ~~C. "Institution" means the state penitentiary and~~
12 ~~any other similar state institution hereinafter created;~~

13 ~~D. "Board" means the parole board;~~

14 ~~E. "Director" means the director of the field~~
15 ~~services division of the corrections department or any employee~~
16 ~~designated by him; and]~~

17 A. "absconding" means that a person under
18 supervision deliberately makes the person's whereabouts unknown
19 to the person's probation or parole officer or fails to report
20 for the purposes of avoiding supervision, and reasonable
21 efforts by the probation and parole officer to locate the
22 person have been unsuccessful;

23 ~~[F.]~~ B. "adult" means any person convicted of a
24 crime by a district court;

25 C. "board" means the parole board;

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1 D. "director" means the director of the adult
2 probation and parole division of the corrections department or
3 any employee designated by the director;

4 E. "geriatric inmate" means a person who:

5 (1) is under sentence to or confined in a
6 prison or other correctional institution under the control of
7 the corrections department;

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

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

11 (4) does not constitute a danger to the
12 person's own self or to society;

13 F. "institution" means the state penitentiary and
14 any other similar state institution;

15 G. "non-technical violation" means absconding or
16 arrest for a new felony or misdemeanor;

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

21 I. "permanently incapacitated inmate" means a
22 person who:

23 (1) is under sentence to or confined in a
24 prison or other correctional institution under the control of
25 the corrections department;

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

4 (3) does not constitute a danger to the
5 person's own self or to society;

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

10 K. "technical violation" means a violation of the
11 conditions of probation or parole supervision other than arrest
12 for a new felony or misdemeanor offense or absconding; and

13 L. "terminally ill inmate" means a person who:

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

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

20 (3) does not constitute a danger to the
21 person's own self or to society."

22 SECTION 4. Section 31-21-9 NMSA 1978 (being Laws 1972,
23 Chapter 71, Section 17) is amended to read:

24 "31-21-9. PRESENTENCE [~~AND PRERELEASE~~] INVESTIGATIONS.--

25 A. Upon the order of any [~~district or magistrate~~]

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1 court, the director shall prepare a presentence report [which]
2 that shall include [~~such information as the court may request.~~

3 ~~B. Upon the order of any district court, the~~
4 ~~director shall prepare a prerelease report which the court.~~
5 ~~shall use to determine the accused's qualifications for bail.~~
6 ~~The report shall include available information about the~~
7 ~~accused's family ties, employment, financial resources,~~
8 ~~character, physical and mental condition, the length of his~~
9 ~~residence in the community, his record of convictions, his~~
10 ~~record of appearance at court proceedings or of flight to avoid~~
11 ~~prosecution or failure to appear at court proceedings and any~~
12 ~~history of drug or alcohol abuse] the state personal~~
13 identification number, victim impact information, record of
14 prior convictions and the results of any validated risk and
15 needs assessments that may have been administered, and such
16 other information as the court may request.

17 [~~G.~~] B. All local and state law enforcement
18 agencies shall furnish to the director any requested criminal
19 records."

20 SECTION 5. Section 31-21-10 NMSA 1978 (being Laws 1980,
21 Chapter 28, Section 1, as amended) is amended to read:

22 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

23 A. An inmate of an institution who was sentenced to
24 life imprisonment becomes eligible for a parole hearing after
25 the inmate has served thirty years of the sentence. Before

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1 ordering the parole of an inmate sentenced to life
2 imprisonment, the board shall:

3 (1) interview the inmate at the institution
4 where the inmate is committed;

5 (2) consider all pertinent information
6 concerning the inmate, including:

7 (a) the circumstances of the offense;

8 (b) mitigating and aggravating
9 circumstances;

10 (c) whether a deadly weapon was used in
11 the commission of the offense;

12 (d) whether the inmate is a habitual
13 offender;

14 (e) the reports filed under Section
15 31-21-9 NMSA 1978; and

16 (f) the reports of such physical and
17 mental examinations as have been made while in an institution;

18 (3) make a finding that a parole is in the
19 best interest of society and the inmate; and

20 (4) make a finding that the inmate is able and
21 willing to fulfill the obligations of a law-abiding citizen.

22 If parole is denied, the inmate sentenced to life
23 imprisonment shall again become entitled to a parole hearing at
24 two-year intervals. The board may, on its own motion, reopen
25 any case in which a hearing has already been granted and parole

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1 denied.

2 B. Unless the board finds that it is in the best
3 interest of society and the parolee to reduce the period of
4 parole, a person who was sentenced to life imprisonment shall
5 be required to undergo a minimum period of parole of five
6 years. During the period of parole, the person shall be under
7 the guidance and supervision of the board.

8 C. An inmate of an institution who was sentenced to
9 life imprisonment without possibility of release or parole is
10 not eligible for parole and shall remain incarcerated for the
11 entirety of the inmate's natural life.

12 D. Except for certain sex offenders as provided in
13 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
14 first, second or third degree felony and who has served the
15 sentence of imprisonment imposed by the court in an institution
16 designated by the corrections department shall be required to
17 undergo a two-year period of parole. An inmate who was
18 convicted of a fourth degree felony and who has served the
19 sentence of imprisonment imposed by the court in an institution
20 designated by the corrections department shall be required to
21 undergo a one-year period of parole. During the period of
22 parole, the person shall be under the guidance and supervision
23 of the board.

24 E. Every person while on parole shall remain in the
25 legal custody of the institution from which the person was

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1 released, but shall be subject to the orders of the board. The
2 board shall consult a validated risk and needs assessment, if
3 provided by the corrections department, when deciding what
4 conditions of parole to impose. The board shall furnish to
5 each inmate as a prerequisite to release under its supervision
6 a written statement of the conditions of parole that shall be
7 accepted and agreed to by the inmate as evidenced by the
8 inmate's signature affixed to a duplicate copy to be retained
9 in the files of the board. The board shall also require as a
10 prerequisite to release the submission and approval of a parole
11 plan. If an inmate refuses to affix the inmate's signature to
12 the written statement of the conditions of parole or does not
13 have an approved parole plan, the inmate shall not be released
14 and shall remain in the custody of the institution in which the
15 inmate has served the inmate's sentence, excepting parole,
16 until such time as the period of parole the inmate was required
17 to serve, less meritorious deductions, if any, expires, at
18 which time the inmate shall be released from that institution
19 without parole, or until such time that the inmate evidences
20 acceptance and agreement to the conditions of parole as
21 required or receives approval for the inmate's parole plan or
22 both. Time served from the date that an inmate refuses to
23 accept and agree to the conditions of parole or fails to
24 receive approval for the inmate's parole plan shall reduce the
25 period, if any, to be served under parole at a later date. If

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1 the district court has ordered that the inmate make restitution
2 to a victim as provided in Section 31-17-1 NMSA 1978, the board
3 shall include restitution as a condition of parole. The board
4 shall also personally apprise the inmate of the conditions of
5 parole and the inmate's duties relating thereto.

6 F. When a person on parole has performed the
7 obligations of the person's release for the period of parole
8 provided in this section, the board shall make a final order of
9 discharge and issue the person a certificate of discharge.

10 G. Pursuant to the provisions of Section 31-18-15
11 NMSA 1978, the board shall require the inmate as a condition of
12 parole:

13 (1) to pay the actual costs of parole services
14 to the adult probation and parole division of the corrections
15 department for deposit to the corrections department intensive
16 supervision fund not exceeding one thousand eight hundred
17 dollars (\$1,800) annually to be paid in monthly installments of
18 not less than twenty-five dollars (\$25.00) and not more than
19 one hundred fifty dollars (\$150), as set by the appropriate
20 district supervisor of the adult probation and parole division,
21 based upon the financial circumstances of the defendant. The
22 defendant's payment of the supervised parole costs shall not be
23 waived unless the board holds an evidentiary hearing and finds
24 that the defendant is unable to pay the costs. If the board
25 waives the defendant's payment of the supervised parole costs

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1 and the defendant's financial circumstances subsequently change
2 so that the defendant is able to pay the costs, the appropriate
3 district supervisor of the adult probation and parole division
4 shall advise the board and the board shall hold an evidentiary
5 hearing to determine whether the waiver should be rescinded;
6 and

7 (2) to reimburse a law enforcement agency or
8 local crime stopper program for the amount of any reward paid
9 by the agency or program for information leading to the
10 inmate's arrest, prosecution or conviction.

11 H. The provisions of this section shall apply to
12 all inmates except geriatric, permanently incapacitated and
13 terminally ill inmates eligible for the medical and geriatric
14 parole program as provided by the Parole Board Act."

15 **SECTION 6.** Section 31-21-13.1 NMSA 1978 (being Laws 1988,
16 Chapter 62, Section 3, as amended) is amended to read:

17 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

18 A. As used in this section, "intensive supervision
19 programs" means programs that provide highly structured and
20 intense supervision, with stringent reporting requirements, of
21 certain individuals who represent an excessively high
22 assessment of risk of violation of probation or parole,
23 emphasize meaningful rehabilitative activities and reasonable
24 alternatives without seriously increasing the risk of
25 recidivist crime and facilitate the payment of restitution by

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1 the offender to the victim. "Intensive supervision programs"
2 [~~include~~] includes house arrest programs or electronic
3 surveillance programs or both.

4 B. The corrections department shall implement and
5 operate intensive supervision programs in various local
6 communities. The programs shall provide services for
7 appropriate individuals by probation and parole officers of the
8 corrections department. The corrections department shall
9 promulgate rules [~~and regulations~~] to provide that the officers
10 providing these services have [~~a maximum case load of forty~~
11 ~~offenders~~] the training, resources and case loads that enable
12 them to operate effectively and to provide for offender
13 selection and other criteria. The corrections department may
14 cooperate with all recognized law enforcement authorities and
15 share all necessary and pertinent information, records or
16 documents regarding probationers or parolees in order to
17 implement and operate these intensive supervision programs.

18 C. For purposes of this section, a judge
19 contemplating imposition of an intensive supervision program
20 for an individual shall consult with the adult probation and
21 parole division of the corrections department and [~~consider the~~
22 ~~recommendations before imposing such probation~~] review the
23 results of the validated risk and needs assessment. The adult
24 probation and parole division of the corrections department
25 shall recommend only those individuals who score as high risk

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1 and who would have otherwise been recommended for incarceration
2 for intensive supervision programs. [~~A judge has discretion to~~
3 ~~impose an intensive supervision program for an individual,~~
4 ~~regardless of recommendations made by the adult probation and~~
5 ~~parole division.~~] Inmates who are assessed as high risk on a
6 validated risk and needs assessment and who are eligible for
7 parole or are within twelve months of eligibility for parole,
8 or inmates who would otherwise remain in a correctional
9 institution for lack of a parole plan or those parolees whose
10 parole the board would otherwise revoke, are eligible for
11 intensive supervision programs. The provisions of this section
12 do not limit or reduce the statutory authority vested in
13 probation and parole supervision as defined by any other
14 section of the Probation and Parole Act.

15 D. There is created in the state treasury the
16 "corrections department intensive supervision fund" to be
17 administered by the corrections department upon vouchers signed
18 by the secretary of corrections. Balances in the corrections
19 department intensive supervision fund shall not revert to the
20 general fund. Beginning July 1, 1988, the intensive
21 supervision programs established pursuant to this section shall
22 be funded by those supervision costs collected pursuant to the
23 provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The
24 corrections department is specifically authorized to hire
25 additional permanent or term [~~full-time equivalent~~] full-time-

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1 equivalent positions for the purpose of implementing the
2 provisions of this section."

3 SECTION 7. Section 31-21-14 NMSA 1978 (being Laws 1955,
4 Chapter 232, Section 17, as amended) is amended to read:

5 "31-21-14. ~~[RETURN OF]~~ PAROLE ~~[VIOLATOR]~~ VIOLATIONS.--

6 A. At any time during release on parole:

7 (1) the board or the director may issue a
8 warrant for the arrest of the ~~[released prisoner for]~~ parolee
9 to answer a charge of a non-technical violation. ~~[of any of~~
10 ~~the conditions of release or issue a notice to appear to answer~~
11 ~~a charge of violation. The notice shall be served personally~~
12 ~~upon the prisoner]~~ The warrant shall authorize the
13 ~~[superintendent]~~ warden of the institution from which the
14 ~~[prisoner]~~ parolee was released to return the ~~[prisoner]~~
15 parolee to the ~~[actual]~~ physical custody of the institution or
16 to any other ~~[suitable]~~ detention facility designated by the
17 board or the director. If the ~~[prisoner]~~ parolee is out of the
18 state, the warrant shall authorize the ~~[superintendent]~~ warden
19 to return ~~[him]~~ the parolee to the state; or

20 ~~[B.]~~ (2) the director may arrest the
21 ~~[prisoner]~~ parolee without a warrant or may deputize ~~[any]~~ an
22 officer with power of arrest to do so by giving ~~[him]~~ the
23 officer a written statement ~~[setting forth]~~ that the ~~[prisoner]~~
24 parolee has, in the judgment of the director, ~~[violated the~~
25 ~~conditions of his release]~~ committed a non-technical violation.

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1 Where an arrest is made without a warrant, the [prisoner]
2 parolee shall not be returned to the institution unless
3 authorized by the director or the board.

4 B. Pending hearing as provided by law upon [~~any~~] a
5 charge of non-technical violation, the [prisoner] parolee shall
6 remain incarcerated in the institution.

7 C. Upon arrest and detention for a non-technical
8 violation, the board shall cause the [prisoner] parolee to be
9 promptly brought before it for a parole revocation hearing on
10 the [~~parole~~] non-technical violation charged, under rules [~~and~~
11 ~~regulations~~] the board may adopt.

12 D. If the non-technical violation is established,
13 the board may continue or revoke the parole, impose detention
14 for a fixed term up to ninety days, which shall be counted as
15 time served under the sentence, or enter any other order as it
16 sees fit.

17 [~~D.~~] E. A [prisoner] parolee for whose return a
18 warrant has been issued shall, if it is found that the warrant
19 cannot be served, be a fugitive from justice.

20 F. If it appears that [~~he~~] the parolee has
21 [~~violated the provisions of his release~~] committed a non-
22 technical violation, the board shall determine whether the time
23 from the date of the violation to the date of [~~his~~] the
24 parolee's arrest, or any part of it, shall be counted as time
25 served under the sentence.

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1 G. At any time during release on parole, the board
2 or the director may issue a notice to appear to answer a charge
3 of a technical violation. The notice shall be served
4 personally upon the parolee and shall initiate a technical
5 violation process in accordance with Section 11 of this 2019
6 act."

7 SECTION 8. Section 31-21-15 NMSA 1978 (being Laws 1963,
8 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,
9 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended
10 to read:

11 "31-21-15. [~~RETURN OF~~] PROBATION [~~VIOLATOR~~] VIOLATIONS.--

12 A. At any time during probation:

13 (1) the court may issue a warrant for the
14 arrest of a probationer for a non-technical violation [~~of any~~
15 ~~of the conditions of release~~]. The warrant shall authorize the
16 return of the probationer to the physical custody of the court
17 or to any [~~suitable~~] other detention facility designated by the
18 court; or

19 [~~(2)~~] ~~the court may issue a notice to appear to~~
20 ~~answer a charge of violation. The notice shall be personally~~
21 ~~served upon the probationer; or~~

22 [~~(3)~~] (2) the director may arrest a
23 probationer without a warrant or may deputize [~~any~~] an officer
24 with power of arrest to do so by giving the officer a written
25 statement [~~setting forth~~] that the probationer has, in the

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1 judgment of the director, [~~violated the conditions of the~~
2 ~~probationer's release~~] committed a non-technical violation.

3 The written statement, delivered with the probationer by the
4 arresting officer to the official in charge of a county jail or
5 other place of detention, is sufficient warrant for the
6 detention of the probationer.

7 B. Upon the probationer's arrest and detention for
8 a non-technical violation:

9 (1) the director shall immediately notify the
10 court and submit in writing a report [~~showing in what~~]
11 describing the manner in which the probationer has violated the
12 conditions of release; and

13 [~~B. The court shall then hold a hearing, which may~~
14 ~~be informal, on the violation charged.~~]

15 (2) the court shall hold a probation
16 revocation hearing on the non-technical violation charged.

17 C. If the non-technical violation is established at
18 the probation revocation hearing:

19 (1) the sanction for the non-technical
20 violation shall be commensurate with the seriousness of the
21 violation and not a punishment for the offense for which the
22 probationer was placed on probation; and

23 (2) the court may continue or revoke the
24 probation, impose detention for a fixed term up to ninety days,
25 which shall be counted as time served under the sentence, or

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1 enter any other order as it sees fit.

2 D. At any time during probation, the court may
3 issue a notice to appear to answer a charge of technical
4 violation. The notice shall be personally served upon the
5 probationer and shall initiate a technical violation process in
6 accordance with Section 11 of this 2019 act.

7 E. If the technical violation is established before
8 the court at a technical violation hearing, the court may:

9 (1) continue the original probation; ~~[or]~~

10 (2) revoke the probation and either:

11 (a) order a new probation with any
12 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978;
13 or

14 (b) require the probationer to serve the
15 balance of the sentence imposed or any lesser sentence; or

16 (3) if imposition of sentence was deferred,
17 ~~[the court may]~~ impose any sentence that might originally have
18 been imposed, but credit shall be given for time served on
19 probation.

20 ~~[G.]~~ F. If it is found that a warrant for the
21 return of a probationer cannot be served, the probationer is a
22 fugitive from justice.

23 G. After the hearing ~~[upon return]~~, if it appears
24 that the probationer has violated the provisions of the
25 probationer's release, the court shall determine whether the

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1 time from the date of violation to the date of the
2 probationer's arrest, or any part of it, shall be counted as
3 time served on probation.

4 H. For the purposes of this ~~[subsection]~~ section,
5 "probationer" means a person convicted of a crime by a
6 ~~[district, metropolitan, magistrate or municipal]~~ court and
7 released without imprisonment under a suspended or deferred
8 sentence and subject to conditions.

9 ~~[D-]~~ I. The board shall budget funds to cover
10 expenses of returning probationers to the court.

11 J. The sheriff of the county in which the
12 probationer was convicted is the court's agent in the
13 transportation of the probationer, but the director, with the
14 consent of the court, may utilize other state agencies for this
15 purpose when it is in the best interest of the state."

16 **SECTION 9.** Section 31-21-17.1 NMSA 1978 (being Laws 1994,
17 Chapter 21, Section 2) is amended to read:

18 "31-21-17.1. ~~[ADMINISTRATION BY]~~ MEDICAL OR GERIATRIC
19 PAROLE--PROCEDURES--DUTIES OF THE DEPARTMENT--DUTIES OF THE
20 BOARD.--

21 A. The corrections department shall promulgate
22 rules and shall implement a "medical and geriatric parole
23 program", including the form of an application for medical or
24 geriatric parole.

25 B. The director shall identify geriatric,

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1 permanently incapacitated and terminally ill inmates and
2 authorize the release of those inmates who are eligible for
3 medical or geriatric [or medical] parole [based on rules
4 established by the board. The department shall forward an
5 application and documentation in support of parole eligibility
6 to the board within thirty days of receipt of an application
7 from an inmate. The documentation shall include information
8 concerning the inmate's age, medical history and prognosis,
9 institutional behavior and adjustment and criminal history.
10 The inmate or inmate's representative may submit an application
11 to the board] and notify those inmates of the opportunity to
12 apply for medical or geriatric parole. Upon receiving an
13 application, the director shall determine within sixty days
14 whether to recommend an inmate for medical or geriatric parole.
15 The recommendation shall include the inmate's age, medical
16 history and prognosis, if applicable, institutional behavior
17 and adjustment. When the director recommends an inmate for
18 medical or geriatric parole, the director shall submit a
19 statement to the board that the inmate's release is not
20 incompatible with the welfare of society.

21 C. Inmates who have not served their minimum
22 sentences may be considered eligible for parole under the
23 medical and geriatric parole program. Medical and geriatric
24 parole consideration shall be in addition to any other parole
25 for which a geriatric, permanently incapacitated or terminally

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1 ill inmate may be eligible.

2 D. When considering an inmate for medical or
3 geriatric parole, the director may request that reasonable
4 medical and mental health examinations be conducted.

5 E. When determining an inmate's eligibility for
6 geriatric or medical parole, the director shall consider the
7 following criteria concerning the inmate:

8 (1) age;

9 (2) severity of illness, disease or
10 infirmities;

11 (3) comprehensive health evaluation;

12 (4) institutional behavior;

13 (5) level of risk for violence; and

14 (6) alternatives to maintaining the geriatric,
15 permanently incapacitated or terminally ill inmate in
16 traditional settings.

17 F. The parole term of the geriatric, permanently
18 incapacitated or terminally ill inmate on medical or geriatric
19 parole shall be for the remainder of the inmate's sentence,
20 without diminution of sentence for good behavior.

21 G. The board shall release an inmate on medical or
22 geriatric parole upon recommendation from the director unless
23 the parole board finds by clear and convincing evidence that
24 the inmate's release is incompatible with the welfare of
25 society and states in writing its reason for the finding. The

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1 board may not deny medical or geriatric parole solely because
2 of the inmate's criminal history."

3 SECTION 10. A new section of the Probation and Parole Act
4 is enacted to read:

5 "[NEW MATERIAL] INCENTIVES--SANCTIONS FOR TECHNICAL
6 VIOLATIONS.--

7 A. The corrections department shall create,
8 maintain and fully implement an incentives and sanctions system
9 to guide responses to negative and positive behavior by
10 probationers and parolees under supervision by the department.
11 The system shall provide for graduated responses to technical
12 violations of supervision conditions, in a swift, certain and
13 proportional manner, and include guidance and procedures to
14 determine when and how to:

15 (1) request a warrant;
16 (2) initiate a hearing; and
17 (3) seek departmental approval to use
18 custodial interventions.

19 B. To implement and continuously improve the
20 incentives and sanctions system, the corrections department
21 shall:

22 (1) provide information and training on the
23 system for probation and parole officers, supervisors and
24 members and staff of the board;

25 (2) offer information and training on the

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1 system to judges, prosecution and defense attorneys, law
2 enforcement personnel, detention center personnel, contracted
3 service providers and other interested personnel;

4 (3) review the system at least every five
5 years to ensure that it adheres to evidence-based practices and
6 that the use of sanctions and incentives by probation and
7 parole officers is consistent across the state;

8 (4) ensure that the guidance and procedures
9 established by the system consider community safety and the
10 needs of the victim and offender;

11 (5) collect data relating to placement
12 decisions based on the system; and

13 (6) aggregate collected data and provide a
14 report to the appropriate legislative interim committee dealing
15 with courts, corrections and justice issues every two years.

16 C. A probation or parole officer who reasonably
17 believes that a probationer or parolee has committed one or
18 more technical violations that require a sanction shall consult
19 the incentives and sanctions system to determine an appropriate
20 response. Consistent with the system, the officer may impose a
21 non- detention sanction to gain the person's compliance with
22 the conditions of probation or parole.

23 D. Graduated sanctions for technical violations may
24 include three-day and seven-day detention in a county jail or
25 other place of detention. Sanctions served in detention shall

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1 be counted as time served under the sentence.

2 E. The incentives and sanctions system shall apply
3 to persons whose probation or parole commences subsequent to
4 the effective date of this 2019 act and to all persons on
5 probation or parole on the effective date of this 2019 act."

6 SECTION 11. A new section of the Probation and Parole
7 Act is enacted to read:

8 "[NEW MATERIAL] TECHNICAL VIOLATIONS.--

9 A. If a probation or parole officer seeks to impose
10 detention for a technical violation, the officer shall review
11 the violation and proposed detention with a supervisor.

12 B. With supervisory approval, the probation or
13 parole officer shall review the violation and proposed
14 detention with the probationer or parolee and seek a signed
15 waiver from the probationer or parolee that acknowledges the
16 violation and accepts the proposed detention.

17 C. If the waiver is rejected, the probation or
18 parole officer shall promptly report the alleged violation to
19 the court, board or hearing officer, as appropriate, and
20 proceed to formal resolution.

21 D. The officer's written report of a technical
22 violation shall include the officer's recommendation and
23 justification as to final action or resolution of the
24 situation. The officer's recommendation is not binding on the
25 court."

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SECTION 12. REPEAL.--Section 31-21-25.1 NMSA 1978 (being
Laws 1994, Chapter 21, Section 3) is repealed.