

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 263

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING CLARIFICATION
AND GUIDANCE FOR PROBATION AND PAROLE; REMOVING THE REQUIREMENT
FOR PAYMENT OF PROBATION COSTS; REMOVING THE REQUIREMENT FOR
PAYMENT OF PAROLE COSTS; REPEALING SECTION 31-21-25.1 NMSA 1978
(BEING LAWS 1994, CHAPTER 21, SECTION 3).

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

SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977,
Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the

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1 death of a child, life imprisonment;

2 (2) for a first degree felony for aggravated
3 criminal sexual penetration, life imprisonment;

4 (3) for a first degree felony, eighteen years
5 imprisonment;

6 (4) for a second degree felony resulting in
7 the death of a human being, fifteen years imprisonment;

8 (5) for a second degree felony for a sexual
9 offense against a child, fifteen years imprisonment;

10 (6) for a second degree felony for sexual
11 exploitation of children, twelve years imprisonment;

12 (7) for a second degree felony, nine years
13 imprisonment;

14 (8) for a third degree felony resulting in the
15 death of a human being, six years imprisonment;

16 (9) for a third degree felony for a sexual
17 offense against a child, six years imprisonment;

18 (10) for a third degree felony for sexual
19 exploitation of children, eleven years imprisonment;

20 (11) for a third degree felony, three years
21 imprisonment;

22 (12) for a fourth degree felony for sexual
23 exploitation of children, ten years imprisonment; or

24 (13) for a fourth degree felony, eighteen
25 months imprisonment.

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1 B. The appropriate basic sentence of imprisonment
2 shall be imposed upon a person convicted and sentenced pursuant
3 to Subsection A of this section, unless the court alters the
4 sentence pursuant to the provisions of the Criminal Sentencing
5 Act.

6 C. A period of parole shall be imposed only for
7 felony convictions wherein a person is sentenced to
8 imprisonment of more than one year, unless the parties to a
9 proceeding agree that a period of parole should be imposed. If
10 a period of parole is imposed, the court shall include in the
11 judgment and sentence of each person convicted and sentenced to
12 imprisonment in a corrections facility designated by the
13 corrections department authority for a period of parole to be
14 served in accordance with the provisions of Section 31-21-10
15 NMSA 1978 after the completion of any actual time of
16 imprisonment and authority to require, as a condition of
17 parole, [~~the payment of the costs of parole services and~~
18 reimbursement to a law enforcement agency or local crime
19 stopper program in accordance with the provisions of that
20 section. If imposed, the period of parole shall be deemed to
21 be part of the sentence of the convicted person in addition to
22 the basic sentence imposed pursuant to Subsection A of this
23 section together with alterations, if any, pursuant to the
24 provisions of the Criminal Sentencing Act.

25 D. When a court imposes a sentence of imprisonment

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1 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
2 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
3 imprisonment provided pursuant to the provisions of Subsection
4 A of this section, the period of parole shall be served in
5 accordance with the provisions of Section 31-21-10 NMSA 1978
6 for the degree of felony for the basic sentence for which the
7 inmate was convicted. For the purpose of designating a period
8 of parole, a court shall not consider that the basic sentence
9 of imprisonment was suspended or deferred and that the inmate
10 served a period of imprisonment pursuant to the provisions of
11 the Criminal Sentencing Act.

12 E. The court may, in addition to the imposition of
13 a basic sentence of imprisonment, impose a fine not to exceed:

14 (1) for a first degree felony resulting in the
15 death of a child, seventeen thousand five hundred dollars
16 (\$17,500);

17 (2) for a first degree felony for aggravated
18 criminal sexual penetration, seventeen thousand five hundred
19 dollars (\$17,500);

20 (3) for a first degree felony, fifteen
21 thousand dollars (\$15,000);

22 (4) for a second degree felony resulting in
23 the death of a human being, twelve thousand five hundred
24 dollars (\$12,500);

25 (5) for a second degree felony for a sexual

1 offense against a child, twelve thousand five hundred dollars
2 (\$12,500);

3 (6) for a second degree felony for sexual
4 exploitation of children, five thousand dollars (\$5,000);

5 (7) for a second degree felony, ten thousand
6 dollars (\$10,000);

7 (8) for a third degree felony resulting in the
8 death of a human being, five thousand dollars (\$5,000);

9 (9) for a third degree felony for a sexual
10 offense against a child, five thousand dollars (\$5,000);

11 (10) for a third degree felony for sexual
12 exploitation of children, five thousand dollars (\$5,000);

13 (11) for a third or fourth degree felony, five
14 thousand dollars (\$5,000); or

15 (12) for a fourth degree felony for sexual
16 exploitation of children, five thousand dollars (\$5,000).

17 F. When the court imposes a sentence of
18 imprisonment for a felony offense, the court shall indicate
19 whether or not the offense is a serious violent offense, as
20 defined in Section 33-2-34 NMSA 1978. The court shall inform
21 an offender that the offender's sentence of imprisonment is
22 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
23 and 33-2-38 NMSA 1978. If the court fails to inform an
24 offender that the offender's sentence is subject to those
25 provisions or if the court provides the offender with erroneous

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1 information regarding those provisions, the failure to inform
2 or the error shall not provide a basis for a writ of habeas
3 corpus.

4 G. No later than October 31 of each year, the
5 New Mexico sentencing commission shall provide a written report
6 to the secretary of corrections, all New Mexico criminal court
7 judges, the administrative office of the district attorneys and
8 the chief public defender. The report shall specify the
9 average reduction in the sentence of imprisonment for serious
10 violent offenses and nonviolent offenses, as defined in Section
11 33-2-34 NMSA 1978, due to meritorious deductions earned by
12 prisoners during the previous fiscal year pursuant to the
13 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
14 NMSA 1978. The corrections department shall allow the
15 commission access to documents used by the department to
16 determine earned meritorious deductions for prisoners."

17 SECTION 2. Section 31-20-5 NMSA 1978 (being Laws 1963,
18 Chapter 303, Section 29-17, as amended) is amended to read:

19 "31-20-5. PLACING DEFENDANT ON PROBATION.--

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

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1 when the [~~magistrate, metropolitan or district~~] court has
2 [~~deferred or suspended sentence, it~~] entered an order of
3 conditional discharge pursuant to Section 31-20-13 or 30-31-28
4 NMSA 1978, entered an order deferring the sentence or entered
5 an order suspending in part or in full the sentence, the court
6 shall order the defendant to be placed on probation for all or
7 some portion of the period of the conditional discharge,
8 deferment or suspension if the defendant is in need of
9 supervision, guidance or direction that is feasible for the
10 corrections department to furnish.

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

18 C. Pursuant to Subsections A and B of this section,
19 persons convicted by plea in magistrate or metropolitan court
20 for a case that originally contained felony charges shall be
21 eligible for probation and supervised by the adult probation
22 and parole division of the corrections department.

23 D. The district court shall consult a validated
24 risk and needs assessment when deciding what conditions of
25 probation to impose.

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1 ~~[B-]~~ E. If a defendant is required to serve a
2 period of probation subsequent to a period of incarceration:

3 (1) the period of probation shall be served
4 subsequent to any required period of parole, with the time
5 served on parole credited as time served on the period of
6 probation and the conditions of probation imposed by the court
7 deemed as additional conditions of parole; and

8 (2) ~~[in the event that]~~ if the defendant
9 violates any condition of that parole and the violation is not
10 sanctioned pursuant to the provisions of Section 12 of this
11 2020 act, the parole board shall cause ~~[him]~~ the defendant to
12 be brought before it pursuant to the provisions of Section
13 31-21-14 NMSA 1978 and may make any disposition authorized
14 pursuant to that section and, if parole is revoked, the period
15 of parole served in the custody of a correctional facility
16 shall not be credited as time served on probation."

17 **SECTION 3.** Section 31-20-6 NMSA 1978 (being Laws 1963,
18 Chapter 303, Section 29-18, as amended) is amended to read:

19 "31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
20 SENTENCE.--The ~~[magistrate, metropolitan or district]~~ court
21 shall attach to its order deferring or suspending sentence
22 reasonable conditions as it may deem necessary to ensure that
23 the defendant will observe the laws of the United States and
24 the various states and the ordinances of any municipality. The
25 defendant upon conviction shall be required to reimburse a law

1 enforcement agency or local crime stopper program for the
2 amount of any reward paid by the agency or program for
3 information leading to the defendant's arrest, prosecution or
4 conviction, but in no event shall reimbursement to the crime
5 stopper program preempt restitution to victims pursuant to the
6 provisions of Section 31-17-1 NMSA 1978. ~~[The defendant upon
7 conviction shall be required to pay the actual costs of the
8 defendant's supervised probation service to the adult probation
9 and parole division of the corrections department or
10 appropriate responsible agency for deposit to the corrections
11 department intensive supervision fund not exceeding one
12 thousand eight hundred dollars (\$1,800) annually to be paid in
13 monthly installments of not less than twenty-five dollars
14 (\$25.00) and not more than one hundred fifty dollars (\$150), as
15 set by the appropriate district supervisor of the adult
16 probation and parole division, based upon the financial
17 circumstances of the defendant. The defendant's payment of the
18 supervised probation costs shall not be waived unless the court
19 holds an evidentiary hearing and finds that the defendant is
20 unable to pay the costs. If the court waives the defendant's
21 payment of the supervised probation costs and the defendant's
22 financial circumstances subsequently change so that the
23 defendant is able to pay the costs, the appropriate district
24 supervisor of the adult probation and parole division shall
25 advise the court and the court shall hold an evidentiary~~

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1 ~~hearing to determine whether the waiver should be rescinded.]~~

2 The court may also require the defendant to:

3 A. provide for the support of persons for whose
4 support the defendant is legally responsible;

5 B. undergo available medical or psychiatric
6 treatment and enter and remain in a specified institution when
7 required for that purpose;

8 C. be placed on probation under the supervision,
9 guidance or direction of the adult probation and parole
10 division for a term not to exceed five years;

11 D. serve a period of time in volunteer labor to be
12 known as "community service". The type of labor and period of
13 service shall be at the sole discretion of the court; provided
14 that a person receiving community service shall be immune from
15 any civil liability other than gross negligence arising out of
16 the community service, and a person who performs community
17 service pursuant to court order or a criminal diversion program
18 shall not be entitled to wages, shall not be considered an
19 employee and shall not be entitled to workers' compensation,
20 unemployment benefits or any other benefits otherwise provided
21 by law. As used in this subsection, "community service" means
22 labor that benefits the public at large or a public, charitable
23 or educational entity or institution;

24 E. make a contribution of not less than ten dollars
25 (\$10.00) and not more than one hundred dollars (\$100), to be

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1 paid in monthly installments of not less than five dollars
 2 (\$5.00), to a local crime stopper program, a local domestic
 3 violence prevention or treatment program or a local drug abuse
 4 resistance education program that operates in the territorial
 5 jurisdiction of the court; and

6 F. satisfy any other conditions reasonably related
 7 to the defendant's rehabilitation."

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

10 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

11 A. The Probation and Parole Act shall be liberally
 12 construed to the end that the treatment of persons convicted of
 13 a crime shall take into consideration their individual
 14 characteristics, circumstances [~~needs and potentialities as~~
 15 ~~revealed by case study~~] and assessment of risk and needs and
 16 that such persons shall be dealt with in the community by a
 17 uniformly organized system of constructive rehabilitation under
 18 probation supervision instead of in an institution or under
 19 parole supervision when a period of institutional treatment is
 20 deemed essential in the light of the needs of public safety and
 21 their own welfare.

22 B. The corrections department shall:

23 (1) operate probation and parole supervision
 24 based upon application of a validated risk and needs assessment
 25 and principles of effective intervention to reduce criminogenic

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1 risk and needs factors;

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

4 (3) recommend and enforce conditions that
5 include cognitive-behavioral programming to address criminal
6 thinking and address basic needs and transitional requirements,
7 such as housing, employment, medical and mental health services
8 and transportation; and

9 (4) apply a consistent system of incentives
10 and graduated sanctions to promptly respond to positive and
11 negative behavior by probationers and parolees under
12 supervision."

13 SECTION 5. Section 31-21-5 NMSA 1978 (being Laws 1978,
14 Chapter 41, Section 1, as amended) is amended to read:

15 "31-21-5. DEFINITIONS.--As used in the Probation and
16 Parole Act:

17 ~~A. "probation" means the procedure under which an~~
18 ~~adult defendant, found guilty of a crime upon verdict or plea,~~
19 ~~is released by the court without imprisonment under a suspended~~
20 ~~or deferred sentence and subject to conditions;~~

21 ~~B. "parole" means the release to the community of~~
22 ~~an inmate of an institution by decision of the board or by~~
23 ~~operation of law, subject to conditions imposed by the board~~
24 ~~and to its supervision;~~

25 ~~C. "institution" means the state penitentiary and~~

1 ~~any other similar state institution hereinafter created;~~

2 ~~D. "board" means the parole board;~~

3 ~~E. "director" means the director of the field~~
4 ~~services division of the corrections department or any employee~~
5 ~~designated by him; and]~~

6 A. "absconding" means that a person under
7 supervision willfully makes the person's whereabouts unknown to
8 the person's probation and parole officer or willfully fails to
9 report as ordered and, in addition, reasonable efforts by the
10 probation and parole officer to locate the person have been
11 unsuccessful;

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

14 C. "board" means the parole board;

15 D. "director" means the director of the adult
16 probation and parole division of the corrections department or
17 any employee designated by the director;

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

19 (1) is under sentence to or confined in a
20 prison or other correctional institution under the control of
21 the corrections department;

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

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

25 (4) does not constitute a danger to the

1 person's own self or to society;

2 F. "institution" means the state penitentiary and
3 any other similar state institution;

4 G. "parole" means the release to the community of
5 an inmate of an institution by decision of the board or by
6 operation of law, subject to conditions imposed by the board
7 and to its supervision;

8 H. "permanently incapacitated inmate" means a
9 person who:

10 (1) is under sentence to or confined in a
11 prison or other correctional institution under the control of
12 the corrections department;

13 (2) by reason of an existing medical
14 condition, is permanently and irreversibly physically
15 incapacitated; and

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

18 I. "probation" means the procedure under which an
19 adult defendant is released by the court without imprisonment
20 under a conditional discharge, an order deferring sentence or
21 an order partially or fully suspending sentence and subjecting
22 the defendant to conditions;

23 J. "reasonable efforts" means, at a minimum,
24 checking with a probationer's or parolee's emergency contact,
25 last known address, last known employment and hospitals and

1 jails in the area;

2 K. "standard violation" means absconding or
3 violating any municipal or county ordinance or tribal, state or
4 federal criminal law;

5 L. "technical violation" means a violation of the
6 conditions of probation or parole supervision other than those
7 violations constituting a standard violation. "Technical
8 violation" includes an instance in which a probationer or
9 parolee fails to make a scheduled appointment and:

10 (1) the probation and parole officer fails to
11 perform reasonable efforts to locate the probationer or
12 parolee; or

13 (2) the probationer or parolee makes the
14 person's whereabouts known to the probation and parole officer
15 or reports to the officer prior to the completion of the
16 officer's reasonable efforts to locate the person; and

17 M. "terminally ill inmate" means a person who:

18 (1) is under sentence or confined in a prison
19 or other correctional institution under the control of the
20 corrections department;

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

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

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1 SECTION 6. Section 31-21-9 NMSA 1978 (being Laws 1972,
2 Chapter 71, Section 17) is amended to read:

3 "31-21-9. PRESENTENCE [~~AND PRERELEASE~~] INVESTIGATIONS.--

4 A. Upon the order of any [~~district or magistrate~~]
5 court, the director shall prepare a presentence report [~~which~~]
6 that shall include [such information as the court may request.

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

22 [~~G.~~] B. All local and state law enforcement
23 agencies shall furnish to the director any requested criminal
24 records."

25 SECTION 7. Section 31-21-10 NMSA 1978 (being Laws 1980,

1 Chapter 28, Section 1, as amended) is amended to read:

2 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

3 A. An inmate of an institution who was sentenced to
4 life imprisonment becomes eligible for a parole hearing after
5 the inmate has served thirty years of the sentence. Before
6 ordering the parole of an inmate sentenced to life
7 imprisonment, the board shall:

8 (1) interview the inmate at the institution
9 where the inmate is committed;

10 (2) consider all pertinent information
11 concerning the inmate, including:

12 (a) the circumstances of the offense;

13 (b) mitigating and aggravating
14 circumstances;

15 (c) whether a deadly weapon was used in
16 the commission of the offense;

17 (d) whether the inmate is a habitual
18 offender;

19 (e) the reports filed under Section
20 31-21-9 NMSA 1978; and

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

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

25 (4) make a finding that the inmate is able and

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1 willing to fulfill the obligations of a law-abiding citizen.

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

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

13 C. An inmate of an institution who was sentenced to
14 life imprisonment without possibility of release or parole is
15 not eligible for parole and shall remain incarcerated for the
16 entirety of the inmate's natural life.

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

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1 undergo a one-year period of parole. During the period of
2 parole, the person shall be under the guidance and supervision
3 of the board.

4 E. Every person while on parole shall remain in the
5 legal custody of the institution from which the person was
6 released, but shall be subject to the orders of the board. The
7 board shall maintain a non-reporting caseload to assist the
8 adult probation and parole division of the corrections
9 department in placing holds if a non-reporting parolee is
10 arrested and booked. The board shall furnish to each inmate as
11 a prerequisite to release under its supervision a written
12 statement of the conditions of parole that shall be accepted
13 and agreed to by the inmate as evidenced by the inmate's
14 signature affixed to a duplicate copy to be retained in the
15 files of the board. The board shall also require as a
16 prerequisite to release the submission and approval of a parole
17 plan. If an inmate refuses to affix the inmate's signature to
18 the written statement of the conditions of parole or does not
19 have an approved parole plan, the inmate shall not be released
20 and shall remain in the custody of the institution in which the
21 inmate has served the inmate's sentence, excepting parole,
22 until such time as the period of parole the inmate was required
23 to serve, less meritorious deductions, if any, expires, at
24 which time the inmate shall be released from that institution
25 without parole, or until such time that the inmate evidences

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1 acceptance and agreement to the conditions of parole as
2 required or receives approval for the inmate's parole plan or
3 both. Time served from the date that an inmate refuses to
4 accept and agree to the conditions of parole or fails to
5 receive approval for the inmate's parole plan shall reduce the
6 period, if any, to be served under parole at a later date. If
7 the district court has ordered that the inmate make restitution
8 to a victim as provided in Section 31-17-1 NMSA 1978, the board
9 shall include restitution as a condition of parole. The board
10 shall also personally apprise the inmate of the conditions of
11 parole and the inmate's duties relating thereto.

12 F. When a person on parole has performed the
13 obligations of the person's release for the period of parole
14 provided in this section, the board shall make a final order of
15 discharge and issue the person a certificate of discharge.

16 G. Pursuant to the provisions of Section 31-18-15
17 NMSA 1978, the board shall require the inmate as a condition of
18 parole

19 ~~[(1) to pay the actual costs of parole~~
20 ~~services to the adult probation and parole division of the~~
21 ~~corrections department for deposit to the corrections~~
22 ~~department intensive supervision fund not exceeding one~~
23 ~~thousand eight hundred dollars (\$1,800) annually to be paid in~~
24 ~~monthly installments of not less than twenty-five dollars~~
25 ~~(\$25.00) and not more than one hundred fifty dollars (\$150), as~~

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1 ~~set by the appropriate district supervisor of the adult~~
 2 ~~probation and parole division, based upon the financial~~
 3 ~~circumstances of the defendant. The defendant's payment of the~~
 4 ~~supervised parole costs shall not be waived unless the board~~
 5 ~~holds an evidentiary hearing and finds that the defendant is~~
 6 ~~unable to pay the costs. If the board waives the defendant's~~
 7 ~~payment of the supervised parole costs and the defendant's~~
 8 ~~financial circumstances subsequently change so that the~~
 9 ~~defendant is able to pay the costs, the appropriate district~~
 10 ~~supervisor of the adult probation and parole division shall~~
 11 ~~advise the board and the board shall hold an evidentiary~~
 12 ~~hearing to determine whether the waiver should be rescinded;~~
 13 ~~and~~

14 (2)] to reimburse a law enforcement agency or
 15 local crime stopper program for the amount of any reward paid
 16 by the agency or program for information leading to the
 17 inmate's arrest, prosecution or conviction, but in no event
 18 shall reimbursement to the crime stopper program preempt
 19 restitution to victims pursuant to the provisions of Section
 20 31-17-1 NMSA 1978.

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

25 SECTION 8. Section 31-21-13.1 NMSA 1978 (being Laws 1988,

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1 Chapter 62, Section 3, as amended) is amended to read:

2 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

3 A. As used in this section, "intensive supervision
4 programs" means programs that provide highly structured and
5 intense supervision, with stringent reporting requirements, of
6 certain individuals who represent an excessively high
7 assessment of risk of violation of probation or parole,
8 emphasize meaningful rehabilitative activities and reasonable
9 alternatives without seriously increasing the risk of
10 recidivist crime and facilitate the payment of restitution by
11 the offender to the victim. "Intensive supervision programs"
12 [~~include~~] includes house arrest programs or electronic
13 surveillance programs or both.

14 B. The corrections department shall implement and
15 operate intensive supervision programs in various local
16 communities. The programs shall provide services for
17 appropriate individuals by probation and parole officers of the
18 corrections department. The corrections department shall
19 promulgate rules [~~and regulations~~] to provide that the officers
20 providing these services have [~~a maximum case load of forty~~
21 ~~offenders~~] the training, resources and caseloads that enable
22 them to operate effectively and to provide for offender
23 selection and other criteria. The corrections department may
24 cooperate with all recognized law enforcement authorities and
25 share all necessary and pertinent information, records or

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1 documents regarding probationers or parolees in order to
2 implement and operate these intensive supervision programs.

3 C. For purposes of this section, a judge
4 contemplating imposition of an intensive supervision program
5 for an individual shall consult with the adult probation and
6 parole division of the corrections department and [~~consider the~~
7 ~~recommendations before imposing such probation~~] review the
8 results of the validated risk and needs assessment. The [~~adult~~
9 ~~probation and parole~~] division [~~of the corrections department~~]
10 shall recommend only those individuals who score as high risk
11 and who would have otherwise been recommended for incarceration
12 for intensive supervision programs. A judge has discretion to
13 impose an intensive supervision program for an individual,
14 regardless of recommendations made by the [~~adult probation and~~
15 ~~parole~~] division, only if a validated risk and needs assessment
16 has been provided to the judge and considered in the decision
17 to impose an intensive supervision program. Inmates eligible
18 for parole or within twelve months of eligibility for parole,
19 or inmates who would otherwise remain in a correctional
20 institution for lack of a parole plan or those parolees whose
21 parole the board would otherwise revoke, are eligible for
22 intensive supervision programs. The provisions of this section
23 do not limit or reduce the statutory authority vested in
24 probation and parole supervision as defined by any other
25 section of the Probation and Parole Act.

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1 ~~[D. There is created in the state treasury the~~
2 ~~"corrections department intensive supervision fund" to be~~
3 ~~administered by the corrections department upon vouchers signed~~
4 ~~by the secretary of corrections. Balances in the corrections~~
5 ~~department intensive supervision fund shall not revert to the~~
6 ~~general fund. Beginning July 1, 1988, the intensive~~
7 ~~supervision programs established pursuant to this section shall~~
8 ~~be funded by those supervision costs collected pursuant to the~~
9 ~~provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The~~
10 ~~corrections department is specifically authorized to hire~~
11 ~~additional permanent or term full-time equivalent positions for~~
12 ~~the purpose of implementing the provisions of this section.]"~~

13 SECTION 9. Section 31-21-14 NMSA 1978 (being Laws 1955,
14 Chapter 232, Section 17, as amended) is amended to read:

15 "31-21-14. ~~[RETURN OF]~~ PAROLE ~~[VIOLATOR]~~ VIOLATIONS.--

16 A. At any time during release on parole:

17 (1) the board or the director may issue a
18 warrant for the arrest of the ~~[released prisoner for]~~ parolee
19 to answer a charge of a standard violation. ~~[of any of the~~
20 ~~conditions of release, or issue a notice to appear to answer a~~
21 ~~charge of violation. The notice shall be served personally~~
22 ~~upon the prisoner]~~ The warrant shall authorize the
23 ~~[superintendent]~~ warden of the institution from which the
24 ~~[prisoner]~~ parolee was released to return the ~~[prisoner]~~
25 parolee to the ~~[actual]~~ physical custody of the institution or

1 to any other [~~suitable~~] detention facility designated by the
 2 board or the director. If the [~~prisoner~~] parolee is out of the
 3 state, the warrant shall authorize the [~~superintendent~~] warden
 4 to return [~~him~~] the parolee to the state;

5 [~~B. the director~~] (2) a probation and parole
 6 officer may arrest the [~~prisoner~~] parolee without a warrant or
 7 may deputize [~~any~~] an officer with the power of arrest to do so
 8 by giving [~~him~~] the officer a written statement [~~setting forth~~]
 9 that the [~~prisoner~~] parolee has, in the judgment of the
 10 [~~director, violated the conditions of his release~~] probation
 11 and parole officer, committed a standard violation. Where an
 12 arrest is made without a warrant, the [~~prisoner~~] parolee shall
 13 not be returned to the institution unless authorized by the
 14 director or the board;

15 (3) a probation and parole officer may arrest
 16 a parolee without a warrant or may deputize an officer with the
 17 power of arrest to do so by giving the officer a written
 18 statement that the parolee has, in the judgment of the
 19 probation and parole officer, committed a technical violation
 20 or standard violation if the parolee is serving a period of
 21 parole stemming from a plea or conviction for a sex offense
 22 enumerated in Subsection I of Section 29-11A-3 NMSA 1978, a
 23 serious violent offense as enumerated in Paragraph (4) of
 24 Subsection L of Section 33-2-34 NMSA 1978 or a human
 25 trafficking offense as enumerated in Section 30-52-1 NMSA 1978;

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1 or

2 (4) a probation and parole officer may arrest
3 a parolee for a technical or standard violation without a
4 warrant or may deputize an officer with the power of arrest to
5 do so if the probation and parole officer has reason to believe
6 that the parolee poses a flight risk or a danger to the
7 community.

8 B. Pending hearing as provided by law upon ~~[any]~~ a
9 charge of a standard violation, the [prisoner] parolee shall
10 remain incarcerated in the institution.

11 C. Upon arrest and detention for a standard
12 violation, the board shall cause the [prisoner] parolee to be
13 promptly brought before it for a parole revocation hearing on
14 the [parole] standard violation charged, under rules [and
15 regulations] the board may adopt.

16 D. If the standard violation is established, the
17 board may continue or revoke the parole, impose detention for a
18 fixed term up to ninety days, which shall be counted as time
19 served under the sentence, or enter any other order as it sees
20 fit.

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

24 F. If it appears that ~~[he]~~ the parolee has
25 ~~[violated the provisions of his release]~~ committed a standard

1 violation, the board shall determine whether the time from the
2 date of the violation to the date of [~~his~~] the parolee's
3 arrest, or any part of it, shall be counted as time served
4 under the sentence.

5 G. At any time during release on parole, the board
6 or the director may issue a notice to appear to answer a charge
7 of a technical violation. The notice shall be served
8 personally upon the parolee and shall initiate a technical
9 violation process in accordance with Sections 12 and 13 of this
10 2020 act.

11 H. By December 1, 2021 and December 1 of every
12 subsequent year, the director shall report to the appropriate
13 interim committee of the legislature and to the governor and
14 shall post on the corrections department website:

15 (1) the number of warrants issued and arrests
16 made by the director or the board pursuant to Paragraph (1) of
17 Subsection A of this section;

18 (2) the number of arrests made by probation
19 and parole officers pursuant to Paragraphs (2) and (3) of
20 Subsection A of this section;

21 (3) the number of arrests made by probation
22 and parole officers pursuant to Paragraph (4) of Subsection A
23 of this section;

24 (4) the average amount of time per parolee
25 between a detention for a standard violation and the parole

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1 revocation hearing pursuant to Subsection C of this section;

2 (5) the penalty imposed for a standard
3 violation pursuant to Subsection D of this section along with
4 the number of prior violations the parolee committed;

5 (6) the number of times that the board counted
6 the period of time between the date of the violation to the
7 date of the parolee's arrest as time served pursuant to
8 Subsection F of this section; and

9 (7) the number of notices to appear to answer
10 a charge of a technical violation pursuant to Subsection G of
11 this section."

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

16 "31-21-15. ~~[RETURN OF]~~ PROBATION ~~[VIOLATOR]~~ VIOLATIONS.--

17 A. At any time during probation:

18 (1) the court may issue a warrant for the
19 arrest of a probationer for a standard violation ~~[of any of the~~
20 ~~conditions of release]~~. The warrant shall authorize the return
21 of the probationer to the physical custody of the court or to
22 any ~~[suitable]~~ other detention facility designated by the
23 court;

24 (2) the court may issue a ~~[notice to appear to~~
25 ~~answer a charge of violation. The notice shall be personally~~

underscoring material = new
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1 ~~served upon the probationer; or~~ warrant for the arrest of a
2 probationer for a technical violation only if the probationer
3 is serving a period of probation pursuant to an order of
4 conditional discharge, suspended sentence or deferred sentence
5 stemming from a plea or conviction for a sex offense enumerated
6 in Subsection I of Section 29-11A-3 NMSA 1978, a serious
7 violent offense as enumerated in Paragraph (4) of Subsection L
8 of Section 33-2-34 NMSA 1978 or a human trafficking offense as
9 enumerated in Section 30-52-1 NMSA 1978;

10 (3) the director may arrest a probationer
11 without a warrant or may deputize [~~any~~] an officer with power
12 of arrest to do so by giving the officer a written statement
13 [~~setting forth~~] that the probationer has, in the judgment of
14 the director, [~~violated the conditions of the probationer's~~
15 ~~release~~] committed a standard violation. The written
16 statement, delivered with the probationer by the arresting
17 officer to the official in charge of a county jail or other
18 place of detention, is sufficient warrant for the detention of
19 the probationer; or

20 (4) a probation and parole officer may arrest
21 a probationer for a technical or standard violation without a
22 warrant or may deputize an officer with the power of arrest to
23 do so if the probation and parole officer has reason to believe
24 the probationer poses a flight risk or a danger to the
25 community.

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1 B. Upon the probationer's arrest and detention for
2 a standard violation:

3 (1) the director shall immediately notify the
4 court and submit in writing a report [~~showing in what~~]
5 describing the manner in which the probationer has violated the
6 conditions of release; and

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

9 (2) the court shall hold a probation
10 revocation hearing on the standard violation charged.

11 C. If the standard violation is established at the
12 probation revocation hearing, the court may continue or revoke
13 the probation or enter any other order as it sees fit.

14 D. At any time during probation, the court may
15 issue a notice to appear to answer a charge of technical
16 violation. The notice shall be personally served upon the
17 probationer and shall initiate a technical violation hearing.

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

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

21 (2) revoke the probation and either:

22 (a) order a new probation with any
23 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978;
24 or

25 (b) require the probationer to serve the

1 balance of the sentence imposed or any lesser sentence; or
2 (3) if imposition of sentence was deferred,
3 [~~the court may~~] impose any sentence that might originally have
4 been imposed, but credit shall be given for time served on
5 probation.

6 [~~E.~~] F. If it is found that a warrant for the
7 return of a probationer cannot be served, the probationer is a
8 fugitive from justice. After the hearing upon return, if it
9 appears that the probationer has violated the provisions of the
10 probationer's release, the court shall determine whether the
11 time from the date of violation to the date of the
12 probationer's arrest, or any part of it, shall be counted as
13 time served on probation. For the purposes of this subsection,
14 "probationer" means a person convicted of a crime by a
15 district, metropolitan, magistrate or municipal court and
16 released without imprisonment under a conditional discharge, an
17 order deferring sentence or an order partially or fully
18 suspending sentence and subjecting the defendant to conditions.

19 [~~D.~~] G. The board shall budget funds to cover
20 expenses of returning probationers to the court.

21 H. The sheriff of the county in which the
22 probationer was convicted is the court's agent in the
23 transportation of the probationer, but the director, with the
24 consent of the court, may utilize other state agencies for this
25 purpose when it is in the best interest of the state.

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1 I. By December 1, 2021 and December 1 of every
2 subsequent year, the director shall report to the appropriate
3 interim committee of the legislature and to the governor and
4 shall post on the agency website:

5 (1) the number of warrants sought by the
6 director and the number of arrests made by the director
7 pursuant to Paragraph (1) of Subsection A of this section;

8 (2) the number of warrants sought by the
9 director and the number of arrests made by the director
10 pursuant to Paragraph (2) of Subsection A of this section;

11 (3) the number of arrests made by the director
12 or the director's deputies pursuant to Paragraph (3) of
13 Subsection A of this section;

14 (4) the number of arrests made by probation
15 and parole officers pursuant to Paragraph (4) of Subsection A
16 of this section;

17 (5) the average number of technical violations
18 by a probationer before the director seeks either a warrant
19 from a court pursuant to Paragraph (1) of Subsection A of this
20 section or makes an arrest pursuant to Paragraph (4) of
21 Subsection A of this section; and

22 (6) the number of times a probationer was
23 alleged to have committed a standard violation but was
24 adjudicated to have committed a technical violation."

25 SECTION 11. Section 31-21-17.1 NMSA 1978 (being Laws

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1 1994, Chapter 21, Section 2) is amended to read:

2 "31-21-17.1. ~~[ADMINISTRATION BY]~~ MEDICAL OR GERIATRIC
3 PAROLE--PROCEDURES--DUTIES OF THE DEPARTMENT--DUTIES OF THE
4 BOARD.--

5 A. The corrections department shall promulgate
6 rules and shall implement a "medical and geriatric parole
7 program", including the form of an application for medical or
8 geriatric parole.

9 B. The director or the corrections department shall
10 identify geriatric, permanently incapacitated and terminally
11 ill inmates and authorize the release of those inmates who are
12 eligible for medical or geriatric ~~[or medical]~~ parole ~~[based on~~
13 rules established by the board. The department shall forward
14 an application and documentation in support of parole
15 eligibility to the board within thirty days of receipt of an
16 application from an inmate. The documentation shall include
17 information concerning the inmate's age, medical history and
18 prognosis, institutional behavior and adjustment and criminal
19 history. ~~The inmate or inmate's representative may submit an~~
20 application to the board] and notify those inmates of the
21 opportunity to apply for medical or geriatric parole. Upon
22 receiving an application, the corrections department shall
23 determine within thirty days whether to recommend an inmate for
24 medical or geriatric parole. The recommendation shall include
25 the inmate's age, medical history and prognosis, if applicable,

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1 institutional behavior and adjustment. When the department
2 recommends an inmate for medical or geriatric parole, the
3 director shall submit a statement to the board that the
4 inmate's release is not incompatible with the welfare of
5 society.

6 C. Inmates who have not served their minimum
7 sentences may be considered eligible for parole under the
8 medical and geriatric parole program. Medical and geriatric
9 parole consideration shall be in addition to any other parole
10 for which a geriatric, permanently incapacitated or terminally
11 ill inmate may be eligible.

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

15 E. When determining an inmate's eligibility for
16 geriatric or medical parole, the director shall consider the
17 following criteria concerning the inmate:

- 18 (1) age;
19 (2) severity of illness, disease or
20 infirmities;
21 (3) comprehensive health evaluation;
22 (4) institutional behavior;
23 (5) level of risk for violence;
24 (6) potential threat to any victim of the
25 inmate's crime; and

1 (7) alternatives to maintaining the geriatric,
2 permanently incapacitated or terminally ill inmate in
3 traditional settings.

4 F. The parole term of the geriatric, permanently
5 incapacitated or terminally ill inmate on medical or geriatric
6 parole shall be for the remainder of the inmate's sentence,
7 without diminution of sentence for good behavior.

8 G. The board shall release an inmate on medical or
9 geriatric parole upon recommendation from the director unless
10 the board finds by clear and convincing evidence that the
11 inmate's release is incompatible with the welfare of society
12 and states in writing its reason for the finding. The board
13 shall not deny medical or geriatric parole solely because of
14 the inmate's criminal history."

15 SECTION 12. A new section of the Probation and Parole Act
16 is enacted to read:

17 "[NEW MATERIAL] INCENTIVES--SANCTIONS FOR TECHNICAL
18 VIOLATIONS.--

19 A. The adult probation and parole division of the
20 corrections department shall create and implement an incentives
21 and sanctions system to guide responses to negative and
22 positive behavior by probationers and parolees under the
23 supervision of the department. The system shall provide for
24 graduated responses to technical violations of supervision
25 conditions, in a swift, certain and proportional manner, and

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1 include guidance and procedures to determine when and how to:

2 (1) request a warrant;

3 (2) initiate a hearing; and

4 (3) seek departmental approval to use

5 custodial interventions.

6 B. To implement and continuously improve the
7 incentives and sanctions system, the adult probation and parole
8 division shall:

9 (1) provide information and training on the
10 system for probation and parole officers of the division and
11 members and staff of the board;

12 (2) offer information and training on the
13 system to judges, prosecution and defense attorneys, law
14 enforcement personnel, detention center personnel, contracted
15 service providers and other interested personnel;

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

20 (4) ensure that the guidance and procedures
21 established by the system consider community safety and the
22 needs of the victim and offender;

23 (5) collect data relating to placement
24 decisions based on the system; and

25 (6) aggregate collected data and provide a

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1 report to the appropriate legislative interim committee dealing
2 with courts, corrections and justice issues every two years.

3 C. A probation and parole officer who reasonably
4 believes that a probationer or parolee has committed one or
5 more technical violations that require a sanction shall consult
6 the incentives and sanctions system to determine an appropriate
7 response. Consistent with the system, the officer may impose a
8 non-detention sanction to gain the person's compliance with the
9 conditions of probation or parole.

10 D. Graduated sanctions for technical violations may
11 include three-day and seven-day detention in a county jail or
12 other place of detention. Sanctions served in detention shall
13 be counted as time served under the sentence."

14 SECTION 13. A new section of the Probation and Parole
15 Act is enacted to read:

16 "[NEW MATERIAL] TECHNICAL VIOLATIONS.--

17 A. If a probation and parole officer seeks to
18 impose detention for a technical violation, the officer shall
19 review the violation and proposed detention with a supervisor.

20 B. With supervisory approval, the probation and
21 parole officer shall review the violation and proposed
22 detention with the probationer or parolee and seek a signed
23 waiver after consultation with an attorney from the probationer
24 or parolee that acknowledges the violation and accepts the
25 proposed detention.

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1 C. If the waiver for a probationer is rejected, the
2 probation and parole officer shall promptly report the alleged
3 violation to the court. If the waiver for a parolee is
4 rejected, the probation and parole officer shall promptly
5 report the alleged violation to the board and proceed to formal
6 resolution.

7 D. The probation and parole officer's written
8 report of a technical violation shall include the officer's
9 recommendation and justification as to final action or
10 resolution of the situation. The officer's recommendation is
11 not binding on the court."

12 **SECTION 14. TEMPORARY PROVISION--TRANSFER OF THE**
13 **CORRECTIONS DEPARTMENT INTENSIVE SUPERVISION FUND BALANCE TO**
14 **THE GENERAL FUND.--Any unexpended or unencumbered balances**
15 **remaining in the corrections department intensive supervision**
16 **fund on January 1, 2021 shall be transferred to the general**
17 **fund.**

18 **SECTION 15. REPEAL.--Section 31-21-25.1 NMSA 1978 (being**
19 **Laws 1994, Chapter 21, Section 3) is repealed.**

20 **SECTION 16. APPLICABILITY.--**

21 A. The provisions of Sections 12 and 13 of this act
22 apply to persons whose probation or parole commences subsequent
23 to January 1, 2021 and to all persons on probation or parole on
24 January 1, 2021.

25 B. The provisions of Sections 2, 4, 6 and 8 of this
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1 act that pertain to risk and needs assessments and the use of
2 risk and needs assessments apply to judges determining
3 conditions of probation, persons waiting to be sentenced,
4 persons on probation and parole and persons placed on probation
5 or parole on or after July 1, 2021.

6 SECTION 17. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is January 1, 2021.

underscoring material = new
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