

1 SENATE BILL 141

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING STATEWIDE
12 PROCEDURES FOR IMPOSING SANCTIONS FOR TECHNICAL VIOLATIONS OF
13 PROBATION AND PAROLE; REQUIRING ESCALATING NON-INCARCERATION
14 SANCTIONS BEFORE IMPOSING CARCERAL SENTENCING.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. A new section of the Probation and Parole Act
18 is enacted to read:

19 "[NEW MATERIAL] SANCTIONS FOR TECHNICAL VIOLATIONS.--

20 A. The adult probation and parole division of the
21 corrections department shall provide for graduated responses to
22 technical violations of supervision conditions in a swift,
23 certain and proportional manner. Before seeking formal
24 resolution in a court pursuant to Section 31-21-15 NMSA 1978 or
25 before the board pursuant to Section 31-21-14 NMSA 1978, the

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1 probation and parole officer shall impose graduated sanctions
2 pursuant to this section starting with the non-detention
3 sanctions specified in Subsection B of this section.

4 B. A probation and parole officer shall determine
5 whether sanctions are necessary for a technical violation and,
6 if they are, may impose graduated non-detention sanctions for a
7 technical violation in the following manner:

8 (1) for a first violation sanction, up to
9 three days of community service, restrictive curfew, global
10 positioning system monitoring or other non-detention sanction;
11 and

12 (2) for a second violation sanction, up to
13 five days of community service, restrictive curfew, global
14 positioning system monitoring or other non-detention sanction.

15 C. After imposing the non-detention sanctions
16 pursuant to Subsection B of this section, the probation and
17 parole officer may pursue detention sanctions. If a
18 probationer declined to enter a waiver of formal resolution
19 pursuant to Section 31-20-5 NMSA 1978 or if a parolee declined
20 to enter a waiver of formal resolution pursuant to Section
21 31-18-15 NMSA 1978, the probation and parole officer shall
22 promptly report the alleged violation to the court or the board
23 for adjudication and sanctions. If a waiver was given, the
24 probation and parole officer may impose a limited detention
25 sanction not to exceed the following graduated sanctions:

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1 (1) for a third violation sanction, up to
2 three days in jail;

3 (2) for a fourth violation sanction, up to
4 seven days in jail; and

5 (3) for a fifth and subsequent violation
6 sanction, formal resolution in a court pursuant to Section
7 31-21-15 NMSA 1978 for a probationer and formal resolution by
8 the board for a parolee.

9 D. A probation and parole officer may decline to
10 sanction a technical violation or may impose a lesser sanction
11 than provided in this section. If a violation is not
12 sanctioned, it shall not be counted as a sanction for purposes
13 of progressive sanctions outlined in Subsections B and C of
14 this section. If a probation and parole officer believes that
15 additional detention is necessary or that graduated sanctions
16 have failed, the probation and parole officer shall seek formal
17 resolution of a technical violation in a court pursuant to
18 Section 31-21-15 NMSA 1978 for a probationer or formal
19 resolution by the board for a parolee.

20 E. If a probationer or parolee fails to complete
21 any part of the community service imposed pursuant to
22 Subsection B of this section, the probationer or parolee shall
23 be detained in a county jail for the remainder of the community
24 service term specified in that subsection.

25 F. Once sanctions are imposed pursuant to this

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1 section, a probationer or parolee shall not be subject to
2 further technical violation sanctions for the same technical
3 violation instance unless the probationer or parolee fails to
4 comply with the sanctions imposed pursuant to this section.
5 This prohibition on cumulative punishment shall also apply to
6 conduct occurring prior to the technical violation, about which
7 the probation and parole officer knew or had reason to know,
8 and that the probation and parole officer did not allege or
9 cite when the probation and parole officer imposed the
10 sanction.

11 G. To impose non-judicial detention sanctions under
12 this section, the director shall issue a written statement to
13 the jail detaining the probationer or parolee affirming that
14 the adult probation and parole division of the corrections
15 department has complied with Subsections A and B of this
16 section and that this statement shall serve as sufficient
17 warrant for detention of a probationer or parolee. Time served
18 in detention as a non-judicial sanction shall be counted as
19 time served for the period of probation or parole."

20 SECTION 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
21 Chapter 216, Section 4, as amended) is amended to read:

22 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
23 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
24 DEDUCTIONS.--

25 A. If a person is convicted of a noncapital felony,

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1 the basic sentence of imprisonment is as follows:

2 (1) for a first degree felony resulting in the
3 death of a child, life imprisonment;

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

6 (3) for a first degree felony, eighteen years
7 imprisonment;

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

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

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

14 (7) for a second degree felony, nine years
15 imprisonment;

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

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

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

22 (11) for a third degree felony, three years
23 imprisonment;

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

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1 (13) for a fourth degree felony, eighteen
2 months imprisonment.

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

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

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1 provisions of the Criminal Sentencing Act. The order imposing
2 a period of parole shall indicate whether the defendant
3 voluntarily waives future formal resolution for technical
4 parole violations before the parole board pursuant to Section 1
5 of this 2021 act. The court shall ensure that the defendant is
6 advised by counsel before deciding whether the defendant waives
7 formal resolution before the court.

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

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

22 (1) for a first degree felony resulting in the
23 death of a child, seventeen thousand five hundred dollars
24 (\$17,500);

25 (2) for a first degree felony for aggravated

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1 criminal sexual penetration, seventeen thousand five hundred
2 dollars (\$17,500);

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

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

8 (5) for a second degree felony for a sexual
9 offense against a child, twelve thousand five hundred dollars
10 (\$12,500);

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

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

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

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

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

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

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

25 F. When the court imposes a sentence of

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1 imprisonment for a felony offense, the court shall indicate
2 whether or not the offense is a serious violent offense, as
3 defined in Section 33-2-34 NMSA 1978. The court shall inform
4 an offender that the offender's sentence of imprisonment is
5 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
6 and 33-2-38 NMSA 1978. If the court fails to inform an
7 offender that the offender's sentence is subject to those
8 provisions or if the court provides the offender with erroneous
9 information regarding those provisions, the failure to inform
10 or the error shall not provide a basis for a writ of habeas
11 corpus.

12 G. No later than October 31 of each year, the
13 New Mexico sentencing commission shall provide a written report
14 to the secretary of corrections, all New Mexico criminal court
15 judges, the administrative office of the district attorneys and
16 the chief public defender. The report shall specify the
17 average reduction in the sentence of imprisonment for serious
18 violent offenses and nonviolent offenses, as defined in Section
19 33-2-34 NMSA 1978, due to meritorious deductions earned by
20 prisoners during the previous fiscal year pursuant to the
21 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
22 NMSA 1978. The corrections department shall allow the
23 commission access to documents used by the department to
24 determine earned meritorious deductions for prisoners."

25 SECTION 3. Section 31-20-5 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 29-17, as amended) is amended to read:

2 "31-20-5. PLACING DEFENDANT ON PROBATION.--

3 A. When a person has been convicted of a crime for
4 which a sentence of imprisonment is authorized and when the
5 ~~[magistrate, metropolitan or district]~~ court has deferred or
6 suspended sentence, it shall order the defendant to be placed
7 on probation for all or some portion of the period of deferment
8 or suspension if the defendant is in need of supervision,
9 guidance or direction that is feasible for the corrections
10 department to furnish; provided that nothing in this section
11 shall limit the requirements established pursuant to
12 Subsections D and E of Section 66-8-102 NMSA 1978. Except for
13 sex offenders as provided in Section 31-20-5.2 NMSA 1978, the
14 total period of probation ~~[for district court]~~ shall not exceed
15 five years and the total period of probation ~~[for the~~
16 ~~magistrate or metropolitan courts]~~ shall be no longer than the
17 maximum allowable incarceration time for the offense or as
18 otherwise provided by law.

19 B. The order imposing a period of probation shall
20 indicate whether the defendant voluntarily waives future formal
21 resolution for technical probation violations before the court
22 pursuant to Section 1 of this 2021 act. The court shall ensure
23 that the defendant is advised by counsel before deciding
24 whether the defendant waives formal resolution before the
25 court.

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1 C. The court may designate specific and particular
2 conditions as conditions that warrant a standard violation
3 pursuant to Subsection E of Section 31-21-15 NMSA 1978 for a
4 defendant serving a period of probation under a suspended,
5 deferred or conditional discharge from a plea or conviction
6 that includes either a sex offense as defined in Section
7 29-11A-3 NMSA 1978 or a serious violent offense as enumerated
8 in Subparagraphs (a) through (n) of Paragraph (4) of Subsection
9 L of Section 33-2-34 NMSA 1978. The court may only order these
10 conditions if it finds by clear and convincing evidence these
11 additional conditions are necessary to ensure public safety or
12 the safety of a particular individual.

13 [~~B.~~] D. If a defendant is required to serve a
14 period of probation subsequent to a period of incarceration:

15 (1) the period of probation shall be served
16 subsequent to any required period of parole, with the time
17 served on parole credited as time served on the period of
18 probation and the conditions of probation imposed by the court
19 deemed as additional conditions of parole; and

20 (2) [~~in the event that~~] if the defendant
21 violates any condition of that parole, the parole board shall
22 cause [~~him~~] the defendant to be brought before it pursuant to
23 the provisions of Section 31-21-14 NMSA 1978 and may make any
24 disposition authorized pursuant to that section and, if parole
25 is revoked, the period of parole served in the custody of a

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1 correctional facility shall not be credited as time served on
2 probation."

3 SECTION 4. Section 31-21-5 NMSA 1978 (being Laws 1978,
4 Chapter 41, Section 1, as amended) is amended to read:

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

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

11 B. "parole" means the release to the community of
12 an inmate of an institution by decision of the board or by
13 operation of law, subject to conditions imposed by the board
14 and to its supervision;

15 C. "institution" means the state penitentiary and
16 any other similar state institution hereinafter created;

17 D. "board" means the parole board;

18 E. "director" means the director of the ~~[field~~
19 ~~services]~~ adult probation and parole division of the
20 corrections department or any employee designated by ~~[him]~~ the
21 director; ~~[and]~~

22 F. "adult" means any person convicted of a crime by
23 a district court;

24 G. "absconding" means that a person under
25 supervision willfully makes the person's whereabouts unknown or

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1 willfully fails to report as ordered with a purpose to evade
2 compliance with the person's supervision obligations by making
3 the person's self unavailable for supervision, which may be
4 inferred from surrounding circumstances;

5 H. "standard violation" means:

6 (1) absconding;

7 (2) violating any municipal or county criminal
8 ordinance or tribal, state or federal criminal law; or

9 (3) for a sex offender or serious violent
10 offender pursuant to Subsection C of Section 31-20-5 NMSA 1978,
11 any contact with the victim or any violation of a condition
12 designated by the sentencing court as a standard violation; and

13 I. "technical violation" means any willful
14 violation of conditions of probation or parole supervision that
15 is not a standard violation, including a positive chemical test
16 for alcohol or controlled substance consumption or missing a
17 scheduled supervision appointment."

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

20 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

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

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

3 (2) consider all pertinent information
4 concerning the inmate, including:

5 (a) the circumstances of the offense;

6 (b) mitigating and aggravating
7 circumstances;

8 (c) whether a deadly weapon was used in
9 the commission of the offense;

10 (d) whether the inmate is a habitual
11 offender;

12 (e) the reports filed under Section
13 31-21-9 NMSA 1978; and

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

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

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

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

24 B. Unless the board finds that it is in the best
25 interest of society and the parolee to reduce the period of

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1 parole, a person who was sentenced to life imprisonment shall
2 be required to undergo a minimum period of parole of five
3 years. During the period of parole, the person shall be under
4 the guidance and supervision of the board.

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

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

21 E. Every person while on parole shall remain in the
22 legal custody of the institution from which the person was
23 released, but shall be subject to the orders of the board. The
24 board shall furnish to each inmate as a prerequisite to release
25 under its supervision a written statement of the conditions of

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1 parole that shall be accepted and agreed to by the inmate as
2 evidenced by the inmate's signature affixed to a duplicate copy
3 to be retained in the files of the board. If the inmate waived
4 formal resolution of technical parole violations pursuant to
5 Subsection C of Section 31-18-15 NMSA 1978, such waiver shall
6 be noted in the inmate's written statement of conditions. The
7 board shall also require as a prerequisite to release the
8 submission and approval of a parole plan. If an inmate refuses
9 to affix the inmate's signature to the written statement of the
10 conditions of parole or does not have an approved parole plan,
11 the inmate shall not be released and shall remain in the
12 custody of the institution in which the inmate has served the
13 inmate's sentence, excepting parole, until such time as the
14 period of parole the inmate was required to serve, less
15 meritorious deductions, if any, expires, at which time the
16 inmate shall be released from that institution without parole,
17 or until such time that the inmate evidences acceptance and
18 agreement to the conditions of parole as required or receives
19 approval for the inmate's parole plan or both. Time served
20 from the date that an inmate refuses to accept and agree to the
21 conditions of parole or fails to receive approval for the
22 inmate's parole plan shall reduce the period, if any, to be
23 served under parole at a later date. If the district court has
24 ordered that the inmate make restitution to a victim as
25 provided in Section 31-17-1 NMSA 1978, the board shall include

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1 restitution as a condition of parole. The board shall also
2 personally apprise the inmate of the conditions of parole and
3 the inmate's duties relating thereto.

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

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

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

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1 district supervisor of the adult probation and parole division
2 shall advise the board and the board shall hold an evidentiary
3 hearing to determine whether the waiver should be rescinded;
4 and

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

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

13 SECTION 6. 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

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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 ~~[Pending hearing as provided by law upon~~
15 ~~any charge of violation, the prisoner shall remain incarcerated~~
16 ~~in the institution];~~

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

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1 Subsection L of Section 33-2-34 NMSA 1978 or a human
2 trafficking offense as enumerated in Section 30-52-1 NMSA 1978;
3 or

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

10 B. Pending hearing as provided by law upon any
11 charge of violation, the prisoner shall remain incarcerated in
12 the institution.

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

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

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

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1 F. 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 consistent with the procedures
4 outlined in Section 1 of this 2021 act. The notice shall be
5 served personally upon the parolee and shall initiate a
6 technical violation process.

7 G. If a technical violation is established before
8 the board at a technical violation hearing, the sanction for
9 the technical violation shall be commensurate with the
10 seriousness of the violation and not a punishment for the
11 offense for which the parolee was convicted, and the board
12 shall:

13 (1) inquire whether the probation and parole
14 officer supervising the parolee followed the graduated
15 sanctions system provided in Section 1 of this 2021 act; and

16 (2) continue the parole term and impose a non-
17 detention sanction, including community service, a behavioral
18 health or mental health treatment program or a fixed term in a
19 community corrections program pursuant to the Adult Community
20 Corrections Act, which term shall be credited toward the
21 sentence originally imposed, and the parolee shall be placed
22 back on parole; or

23 (3) determine that detention shall be imposed,
24 and the board may impose a term of detention in a county jail
25 that shall not exceed thirty days unless the board articulates

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1 findings and concludes that additional detention is necessary
2 for the parolee's rehabilitation or public safety.

3 H. If it appears that ~~[he]~~ the parolee has
4 ~~[violated the provisions of his release]~~ committed a violation,
5 the board shall determine whether the time from the date of the
6 violation to the date of ~~[his]~~ the parolee's arrest, or any
7 part of it, shall be counted as time served under the
8 sentence."

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

13 "31-21-15. ~~[RETURN OF]~~ PROBATION ~~[VIOLATOR]~~ VIOLATIONS.--

14 A. At any time during probation:

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

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

23 (3) the director may arrest a probationer
24 without warrant or may deputize any officer with power of
25 arrest to do so by giving the officer a written statement

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[bracketed material] = delete

1 setting forth that the probationer has, in the judgment of the
2 director, [~~violated the conditions~~] committed a standard
3 violation of the probationer's release. The written statement,
4 delivered with the probationer by the arresting officer to the
5 official in charge of a county jail or other place of
6 detention, is sufficient warrant for the detention of the
7 probationer. Upon the probationer's arrest and detention, the
8 director shall immediately notify the court and submit in
9 writing a report showing in what manner the probationer has
10 violated the conditions of release; or

11 (4) a probation and parole officer may arrest
12 a probationer for a technical or standard violation without a
13 warrant or may deputize an officer with the power of arrest to
14 do so if the probation and parole officer has reason to believe
15 the probationer poses a flight risk or a danger to the
16 community.

17 ~~[B. The court shall then hold a hearing, which may~~
18 ~~be informal, on the violation charged. If the violation is~~
19 ~~established, the court may continue the original probation or~~
20 ~~revoke the probation and either order a new probation with any~~
21 ~~condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978~~
22 ~~or require the probationer to serve the balance of the sentence~~
23 ~~imposed or any lesser sentence. If imposition of sentence was~~
24 ~~deferred, the court may impose any sentence that might~~
25 ~~originally have been imposed, but credit shall be given for~~

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1 ~~time served on probation.~~

2 ~~G. If it is found that a warrant for the return of~~
3 ~~a probationer cannot be served, the probationer is a fugitive~~
4 ~~from justice. After hearing upon return, if it appears that~~
5 ~~the probationer has violated the provisions of the~~
6 ~~probationer's release, the court shall determine whether the~~
7 ~~time from the date of violation to the date of the~~
8 ~~probationer's arrest, or any part of it, shall be counted as~~
9 ~~time served on probation. For the purposes of this subsection,~~
10 ~~"probationer" means a person convicted of a crime by a~~
11 ~~district, metropolitan, magistrate or municipal court.~~

12 ~~D. The board shall budget funds to cover expenses~~
13 ~~of returning probationers to the court. The sheriff of the~~
14 ~~county in which the probationer was convicted is the court's~~
15 ~~agent in the transportation of the probationer, but the~~
16 ~~director, with the consent of the court, may utilize other~~
17 ~~state agencies for this purpose when it is in the best interest~~
18 ~~of the state.]~~

19 B. If it is found that a warrant for the return of
20 a probationer cannot be served, the probationer shall be a
21 fugitive from justice. After hearing upon return, if it
22 appears that the probationer has violated the provisions of the
23 probationer's release, the court shall determine whether the
24 time from the date of violation to the date of the
25 probationer's arrest, or any part of it, shall be counted as

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1 time served on probation.

2 C. The board shall budget funds to cover expenses
3 of returning probationers to the court. The sheriff of the
4 county in which the probationer was convicted is the court's
5 agent in the transportation of the probationer, but the
6 director, with the consent of the court, may utilize other
7 state agencies for this purpose when it is in the best interest
8 of the state.

9 D. Upon the probationer's arrest and detention or
10 service of a notice to appear for a violation:

11 (1) the director shall immediately notify the
12 court and submit in writing a report describing the manner in
13 which the probationer has violated the conditions of release;
14 and

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

17 E. If a standard violation is established, the
18 court may continue the original probation or revoke the
19 probation and either order a new probation with any condition
20 provided for in Section 31-20-5 or 31-20-6 NMSA 1978 or require
21 the probationer to serve the balance of the sentence imposed or
22 any lesser sentence and credit shall be given for time served
23 on probation. If imposition of sentence was deferred or
24 suspended, the court may impose any sentence that might
25 originally have been imposed, but credit shall be given for

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1 time served on probation.

2 F. If a technical violation is established before
3 the court at a technical violation hearing, the sanction for
4 the technical violation shall be commensurate with the
5 seriousness of the violation and not a punishment for the
6 offense for which the probationer was placed on probation, and
7 the court shall:

8 (1) inquire whether the probation and parole
9 officer supervising the probationer followed the graduated
10 sanctions system provided in Section 1 of this 2021 act; and

11 (2) continue the probation term and impose a
12 non-detention sanction, including community service, a
13 behavioral health or mental health treatment program or a fixed
14 term in a community corrections program pursuant to the Adult
15 Community Corrections Act, which term shall be credited toward
16 the sentence originally imposed, and the defendant shall be
17 placed back on probation; or

18 (3) determine whether detention shall be
19 imposed to enforce the purpose of probation pursuant to
20 Subsection A of Section 31-20-5 NMSA 1978, and if the court
21 determines that detention shall be imposed, the court may
22 impose a term of detention in a county jail that shall not
23 exceed thirty days unless the court articulates findings and
24 concludes that additional detention is necessary for the
25 probationer's rehabilitation or public safety."

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