

1 SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
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56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO CRIMINAL JUSTICE; LIMITING INCARCERATION FOR
TECHNICAL VIOLATIONS OF PROBATION AND PAROLE; ALPHABETIZING
DEFINITIONS.

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

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

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

A. "adult" means a person convicted of a crime by a
district court;

B. "board" means the parole board;

C. "director" means the director of the adult
probation and parole division of the corrections department or
any employee designated by the director;

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1 D. "institution" means the state penitentiary and
2 any other similar state institution hereinafter created;

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

7 [A.] F. "probation" means the procedure under which
8 an adult defendant, found guilty of a crime upon verdict or
9 plea, is released by the court without imprisonment under a
10 suspended 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 ~~G. "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 division of the corrections department or any employee~~
20 ~~designated by him; and~~

21 ~~F. "adult" means any person convicted of a crime by~~
22 ~~a district court]~~

23 G. "standard violation of probation" or "standard
24 violation of parole" means any violation not constituting a
25 technical violation; and

1 H. "technical violation of probation" or "technical
2 violation of parole" means a violation of a condition of
3 probation or parole that does not either create a threat to the
4 probationer or parolee or others or does not constitute a new
5 criminal charge."

6 SECTION 2. Section 31-21-14 NMSA 1978 (being Laws 1955,
7 Chapter 232, Section 17, as amended) is amended to read:

8 "31-21-14. RETURN OF PAROLE VIOLATOR.--

9 A. At any time during release on parole, the board
10 or the director may issue a warrant for the arrest of the
11 [~~released prisoner~~] parolee for [~~violation of any of the~~
12 ~~conditions of release~~] a standard violation of parole or issue
13 a notice to appear to answer a charge of any violation. The
14 notice shall be served personally upon the [~~prisoner~~] parolee.
15 The warrant shall authorize the [~~superintendent~~] warden of the
16 institution from which the [~~prisoner~~] parolee was released to
17 return the [~~prisoner~~] parolee to the actual custody of the
18 institution or to any other suitable detention facility
19 designated by the board or the director. If the [~~prisoner~~]
20 parolee is out of the state, the warrant shall authorize the
21 [~~superintendent~~] warden to return [~~him~~] the parolee to the
22 state. For a technical violation of parole, the director shall
23 issue a notice to appear served personally upon the parolee
24 unless the director authorizes arrest based on a flight risk or
25 danger to the community.

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1 B. The director may arrest the [~~prisoner~~] parolee
2 without a warrant or may deputize [~~any~~] an officer with power
3 of arrest to do so by giving [~~him~~] the officer a written
4 statement setting forth that the [~~prisoner~~] parolee has, in the
5 judgment of the director, [~~violated the conditions of his~~
6 ~~release~~] committed a standard violation of parole and the
7 parolee presents a flight risk or danger to the community.

8 Where an arrest is made without a warrant, the [~~prisoner~~]
9 parolee shall not be returned to the institution unless
10 authorized by the director or the board. Pending hearing as
11 provided by law upon [~~any~~] a charge of a standard violation of
12 parole, the [~~prisoner~~] parolee presenting a flight risk or
13 danger to the community shall remain incarcerated in the
14 institution.

15 C. Upon arrest and detention or service of a notice
16 to appear, the board shall cause the [~~prisoner~~] parolee to be
17 promptly brought before it for a parole revocation hearing on
18 the parole violation charged, under rules and regulations the
19 board may adopt.

20 D. If the violation of parole is established, the
21 board may continue or revoke the parole and impose non-
22 detention sanctions or a maximum of ninety days of
23 incarceration or enter any other order as it sees fit; provided
24 that the sanction shall be commensurate with the seriousness of
25 the violation and not a punishment for the offense of

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1 conviction, and the board:

2 (1) shall not impose a sanction of more than
 3 three days of community service, restrictive curfew, behavioral
 4 health treatment or other non-detention sanction for a first
 5 technical violation of parole;

6 (2) shall not impose a sanction of more than
 7 five days of community service, restrictive curfew, behavioral
 8 health treatment or other non-detention sanction for a second
 9 technical violation of parole;

10 (3) shall not impose a sanction of more than
 11 seven days of incarceration for a third technical violation of
 12 parole; and

13 (4) may impose incarceration for a fixed term
 14 up to thirty days, which shall be counted as time served under
 15 the sentence, or enter any other order as it sees fit for a
 16 fourth or subsequent technical violation of parole; provided
 17 that the board may impose more than thirty days of
 18 incarceration if the board finds that additional detention is
 19 necessary for the parolee's rehabilitation or public safety.

20 ~~[D.]~~ E. A ~~[prisoner]~~ parolee for whose return a
 21 warrant has been issued shall, if it is found that the warrant
 22 cannot be served, be a fugitive from justice. If it appears
 23 that ~~[he]~~ the parolee has violated the provisions of ~~[his]~~ the
 24 parolee's release, the board shall determine whether the time
 25 from the date of the violation to the date of ~~[his]~~ the

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underscored material = new
 [bracketed material] = delete

1 parolee's arrest, or any part of it, shall be counted as time
2 served under the sentence."

3 SECTION 3. Section 31-21-15 NMSA 1978 (being Laws 1963,
4 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,
5 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended
6 to read:

7 "31-21-15. RETURN OF PROBATION VIOLATOR.--

8 A. At any time during probation:

9 (1) the court may issue a warrant for the
10 arrest of a probationer for ~~[violation of any of the conditions~~
11 ~~of release]~~ a standard violation of probation. The warrant
12 shall authorize the return of the probationer to the custody of
13 the court or to any suitable detention facility designated by
14 the court;

15 (2) the court may issue a notice to appear to
16 answer a charge of any violation and shall issue the notice for
17 a technical violation of probation unless the director
18 authorizes arrest based on a flight risk or danger to the
19 community. The notice shall be personally served upon the
20 probationer; or

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

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

9 B. Following service of a notice to appear or
 10 arrest pursuant to Subsection A of this section, the court
 11 shall then hold a hearing, which may be informal, on the
 12 violation charged. If the violation of probation is
 13 established, the court may continue the original probation or
 14 revoke the probation and either order a new probation with any
 15 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978
 16 or require the probationer to serve the balance of the sentence
 17 imposed or any lesser sentence; provided that the sanction
 18 shall be commensurate with the seriousness of the violation and
 19 not a punishment for the offense of conviction, and the court:

20 (1) shall not impose a sanction of more than
 21 three days of community service, restrictive curfew, behavioral
 22 health treatment or other non-detention sanction for a first
 23 technical violation of probation;

24 (2) shall not impose a sanction of more than
 25 five days of community service, restrictive curfew, behavioral

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underscored material = new
 [bracketed material] = delete

1 health treatment or other non-detention sanction for a second
2 technical violation of probation;

3 (3) shall not impose a sanction of more than
4 three days of incarceration for a third technical violation of
5 probation; and

6 (4) may continue the original probation or
7 revoke the probation and either order a new probation with any
8 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978
9 or require the probationer to serve the balance of the sentence
10 imposed or any lesser sentence for a fourth or subsequent
11 technical violation of probation.

12 C. If imposition of sentence was deferred, the
13 court may, consistent with Subsection B of this section, impose
14 any sentence that might originally have been imposed, but
15 credit shall be given for time served on probation.

16 [~~C.~~] D. If it is found that a warrant for the
17 return of a probationer cannot be served, the probationer is a
18 fugitive from justice. After hearing upon return, if it
19 appears that the probationer has violated the provisions of the
20 probationer's release, the court shall determine whether the
21 time from the date of violation to the date of the
22 probationer's arrest, or any part of it, shall be counted as
23 time served on probation. For the purposes of this subsection,
24 "probationer" means a person convicted of a crime by a
25 district, metropolitan, magistrate or municipal court.

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