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HOUSE BILL 1187

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MIMI STEWART

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE TOTAL PERIOD OF  
PROBATION FOR PETTY MISDEMEANOR AND MISDEMEANOR CRIMES; AMENDING  
SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-19-1 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 29-4, as amended) is amended to read:

"31-19-1. SENTENCING AUTHORITY-- MISDEMEANORS-- IMPRISONMENT  
AND FINES-- PROBATION. --

A. Where the defendant has been convicted of a crime  
constituting a misdemeanor, the judge shall sentence the person  
to be imprisoned in the county jail for a definite term less  
than one year or to the payment of a fine of not more than one  
thousand dollars (\$1,000) or to both such imprisonment and fine  
in the discretion of the judge.

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1           B. Where the defendant has been convicted of a crime  
2 constituting a petty misdemeanor, the judge shall sentence the  
3 person to be imprisoned in the county jail for a definite term  
4 not to exceed six months or to the payment of a fine of not more  
5 than five hundred dollars (\$500) or to both such imprisonment  
6 and fine in the discretion of the judge.

7           C. When the court has deferred or suspended sentence,  
8 it shall order the defendant placed on supervised or  
9 unsupervised probation [~~for all or some portion of the period of~~  
10 ~~deferment or suspension~~]. When the defendant has been convicted  
11 of a crime constituting a misdemeanor, the total period of  
12 probation shall not exceed two years. When the defendant has  
13 been convicted of a crime constituting a petty misdemeanor, the  
14 total period of probation shall not exceed one year. "

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

17           "31-20-5. PLACING DEFENDANT ON PROBATION. --

18           A. When a person has been convicted of a crime for  
19 which a sentence of imprisonment is authorized and when the  
20 magistrate, metropolitan or district court has deferred or  
21 suspended sentence, it shall order the defendant to be placed on  
22 probation [~~for all or some portion of the period of deferment or~~  
23 ~~suspension~~] if the defendant is in need of supervision, guidance  
24 or direction that is feasible for [~~the field services division~~  
25 ~~of~~] the corrections department to furnish [~~provided, however~~].

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1 When the defendant has been convicted of a crime constituting a  
2 felony, the total period of probation [~~for district court~~] shall  
3 not exceed five years [~~and the total period of probation for the~~  
4 ~~magistrate or metropolitan courts shall be no longer than the~~  
5 ~~maximum allowable incarceration time for the offense or as~~  
6 ~~otherwise provided by law~~]. When the defendant has been  
7 convicted of a crime constituting a misdemeanor, the total  
8 period of probation shall not exceed two years. When the  
9 defendant has been convicted of a crime constituting a petty  
10 misdemeanor, the total period of probation shall not exceed one  
11 year.

12 B. If a defendant is required to serve a period of  
13 probation subsequent to a period of incarceration:

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

19 (2) in the event that the defendant violates any  
20 condition of that parole, the parole board shall cause him to be  
21 brought before it pursuant to the provisions of Section 31-21-14  
22 NMSA 1978 and may make any disposition authorized pursuant to  
23 that section and, if parole is revoked, the period of parole  
24 served in the custody of a correctional facility shall not be  
25 credited as time served on probation. "

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1           Section 3. Section 31-21-15 NMSA 1978 (being Laws 1963,  
2 Chapter 301, Section 13, as amended) is amended to read:

3           "31-21-15. RETURN OF PROBATION VIOLATOR. --

4           A. At any time during probation:

5                   (1) the court may issue a warrant for the arrest  
6 of a probationer for violation of any of the conditions of  
7 release. The warrant shall authorize the return of the  
8 probationer to the custody of the court or to any suitable  
9 detention facility designated by the court;

10                   (2) the court may issue a notice to appear to  
11 answer a charge of violation. The notice shall be personally  
12 served upon the probationer; or

13                   (3) the director may arrest a probationer without  
14 warrant or may deputize any officer with power of arrest to do  
15 so by giving him a written statement setting forth that the  
16 probationer has, in the judgment of the director, violated the  
17 conditions of his release. The written statement, delivered  
18 with the probationer by the arresting officer to the official in  
19 charge of a county jail or other place of detention, is  
20 sufficient warrant for the detention of the probationer. Upon  
21 arrest and detention, the director shall immediately notify the  
22 court and submit in writing a report showing in what manner the  
23 probationer has violated the conditions of release.

24           B. The court shall then hold a hearing, which may be  
25 informal, on the violation charged. If the violation is

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1 established, the court may continue the original probation or  
2 revoke the probation and either order a new probation with any  
3 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978  
4 or require the probationer to serve the [~~balance~~] entirety of  
5 the sentence imposed or any lesser sentence, less credit for  
6 time served on probation. If imposition of sentence was  
7 deferred, the court may impose any sentence [~~which~~] that might  
8 originally have been imposed but credit shall be given for time  
9 served on probation. The amount of credit given for time served  
10 on probation shall be one day of credit for every three days  
11 served on probation for a misdemeanor offense and one day of  
12 credit for every one day served on probation for a felony  
13 offense.

14 C. If it is found that a warrant for the return of a  
15 probationer cannot be served, the probationer is a fugitive from  
16 justice. After hearing upon return, if it appears that [~~he~~] the  
17 probationer has violated the provisions of his release, the  
18 court shall determine whether the time from the date of  
19 violation to the date of his arrest, or any part of it, shall be  
20 counted as time served on probation.

21 D. The board shall budget funds to cover expenses of  
22 returning probationers to the court. The sheriff of the county  
23 in which the probationer was convicted is the court's agent in  
24 the transportation of the probationer, but the director, with  
25 the consent of the court, may [~~utilize~~] use other state agencies

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1 for this purpose when it is in the best interest of the state."

2 Section 4. EFFECTIVE DATE. --The effective date of the  
3 provisions of this act is July 1, 1997.

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**State of New Mexico**  
**House of Representatives**

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**FORTY-THIRD LEGISLATURE**  
**FIRST SESSION, 1997**

**March 8, 1997**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred**

**HOUSE BILL 1187**

**has had it under consideration and reports same with  
recommendation that it DO PASS, and thence referred to the  
APPROPRIATIONS AND FINANCE COMMITTEE.**

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**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

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Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 2 Against

Yes: 6

No: M P. Garcia, Pederson

Excused: King, Luna, Mallory, Rios, Sanchez

Absent: None

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# **State of New Mexico House of Representatives**

**FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997**

**March 11, 1997**

**Mr. Speaker:**

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred**

**HOUSE BILL 1187**

**has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

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**Max Coll, Chairman**

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HB-1187

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 14 For 0 Against

Yes: 14

Excused: Heaton, Marquardt, Varela

Absent: None

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