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HOUSE BILL 429

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Mimi Stewart

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; CHANGING THE PERIOD OF  
PROBATION FOR DOMESTIC VIOLENCE 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~~] When 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~~] When the defendant has been convicted  
2 of a crime constituting a petty misdemeanor, the judge shall  
3 sentence the person to be imprisoned in the county jail for a  
4 definite term not to exceed six months or to the payment of a  
5 fine of not more than five hundred dollars (\$500) or to both  
6 such imprisonment and fine in the discretion of the judge.

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

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

18           "31-20-5. PLACING DEFENDANT ON PROBATION. --

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

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1 [field services division of the] corrections department to  
2 furnish [provided, however]. When the defendant has been  
3 convicted of a crime constituting a felony, the total period  
4 of probation [for district court] shall not exceed five years  
5 [and the total period of probation for the magistrate or  
6 metropolitan courts shall be no longer than the maximum  
7 allowable incarceration time for the offense or as otherwise  
8 provided by law]. When the defendant has been convicted of a  
9 domestic violence crime constituting a misdemeanor, the total  
10 period of probation shall not exceed eighteen months. When  
11 the defendant has been convicted of a domestic violence crime  
12 constituting a petty misdemeanor, the total period of  
13 probation shall not exceed one year.

14 B. If a defendant is required to serve a period of  
15 probation subsequent to a period of incarceration:

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

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

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1 of parole served in the custody of a correctional facility  
2 shall not be credited as time served on probation. "

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

5 "31-21-15. RETURN OF PROBATION VIOLATOR. --

6 A. At any time during probation:

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

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

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

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1 conditions of release.

2 B. The court shall then hold a hearing, which may  
3 be informal, on the violation charged. If the violation is  
4 established, the court may continue the original probation or  
5 revoke the probation and either order a new probation with any  
6 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978  
7 or require the probationer to serve the [~~balance~~] entirety of  
8 the sentence imposed or any lesser sentence, less credit for  
9 time served on probation. If imposition of sentence was  
10 deferred, the court may impose any sentence [~~which~~] that might  
11 originally have been imposed, but credit shall be given for  
12 time served on probation. When the defendant has been  
13 convicted of a domestic violence crime constituting a  
14 misdemeanor or a petty misdemeanor, the amount of credit given  
15 for time served on probation shall be one day of credit for  
16 every three days served on probation. When the defendant has  
17 been convicted of any other crime constituting a misdemeanor  
18 or a petty misdemeanor or has been convicted of a crime  
19 constituting a felony, the amount of credit given for time  
20 served on probation shall be one day of credit for every one  
21 day served on probation.

22 C. If it is found that a warrant for the return of  
23 a probationer cannot be served, the probationer is a fugitive  
24 from justice. After hearing upon return, if it appears that  
25 [~~he~~] the probationer has violated the provisions of his

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1 release, the court shall determine whether the time from the  
2 date of violation to the date of his arrest, or any part of  
3 it, shall be counted as time served on probation.

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

11 Section 4. EFFECTIVE DATE. --The effective date of the  
12 provisions of this act is July 1, 1999.