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HOUSE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING CLARIFICATION
AND GUIDANCE FOR PROBATION AND PAROLE.

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

SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-17, as amended) is amended to read:

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

A. The purpose of probation is to hold people
accountable for their criminal conduct, promote their
reintegration into law-abiding society and reduce the risks
that they will commit new offenses. When a person has been
convicted of a crime for which a sentence of imprisonment is
authorized and when the ~~[magistrate, metropolitan or district]~~
court has deferred or suspended sentence, it shall order the
defendant to be placed on probation for all or some portion of

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1 the period of deferment or suspension [~~if the defendant is in~~
2 ~~need of supervision, guidance or direction that is feasible for~~
3 ~~the corrections department to furnish~~].

4 B. Except for sex offenders as provided in Section
5 31-20-5.2 NMSA 1978, the total period of probation for district
6 court shall not exceed five years and the total period of
7 probation for the magistrate or metropolitan courts shall be no
8 longer than the maximum allowable incarceration time for the
9 offense or as otherwise provided by law.

10 C. The court shall consult a validated risk and
11 needs assessment, if provided by the corrections department,
12 when deciding what conditions of probation to impose.

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 and the violation is not
22 sanctioned pursuant to the provisions of Section 7 of this 2019
23 act, the parole board shall cause [~~him~~] the defendant to be
24 brought before it pursuant to the provisions of Section
25 31-21-14 NMSA 1978 and may make any disposition authorized

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1 pursuant to that section and, if parole is revoked, the period
2 of parole served in the custody of a correctional facility
3 shall not be credited as time served on probation."

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

6 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

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

18 B. The corrections department shall:

19 (1) operate probation and parole supervision
20 based upon application of a validated risk and needs assessment
21 and principles of effective intervention to reduce criminogenic
22 risk and needs factors;

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

25 (3) recommend and enforce conditions that

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1 include cognitive-behavioral programming to address criminal
2 thinking and address basic needs and transitional requirements,
3 such as housing, employment, medical and mental health services
4 and transportation; and

5 (4) apply a consistent system of incentives
6 and sanctions to promptly respond to positive and negative
7 behavior by probationers and parolees under supervision."

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

10 "31-21-5. DEFINITIONS.--As used in the Probation and
11 Parole Act:

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

16 ~~B. "parole" means the release to the community of~~
17 ~~an inmate of an institution by decision of the board or by~~
18 ~~operation of law, subject to conditions imposed by the board~~
19 ~~and to its supervision;~~

20 ~~C. "institution" means the state penitentiary and~~
21 ~~any other similar state institution hereinafter created;~~

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

23 ~~E. "director" means the director of the field~~
24 ~~services division of the corrections department or any employee~~
25 ~~designated by him; and]~~

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1 A. "absconding" means that a person under
2 supervision deliberately makes the person's whereabouts unknown
3 to the person's probation or parole officer or fails to report
4 for the purposes of avoiding supervision, and reasonable
5 efforts by the probation or parole officer to locate the person
6 have been unsuccessful;

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

9 C. "board" means the parole board;

10 D. "director" means the director of the adult
11 probation and parole division of the corrections department or
12 any employee designated by the director;

13 E. "institution" means the state penitentiary and
14 any other similar state institution;

15 F. "non-technical violation" means absconding or
16 arrest for a new felony or misdemeanor;

17 G. "parole" means the release to the community of
18 an inmate of an institution by decision of the board or by
19 operation of law, subject to conditions imposed by the board
20 and to its supervision;

21 H. "probation" means the procedure under which an
22 adult defendant, found guilty of a crime upon verdict or plea,
23 is released by the court without imprisonment under a suspended
24 or deferred sentence and subject to conditions; and

25 I. "technical violation" means a violation of the

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1 conditions of probation or parole supervision other than arrest
2 for a new felony or misdemeanor offense or absconding."

3 SECTION 4. Section 31-21-9 NMSA 1978 (being Laws 1972,
4 Chapter 71, Section 17) is amended to read:

5 "31-21-9. PRESENTENCE [~~AND PRERELEASE~~] INVESTIGATIONS.--

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

9 ~~B. Upon the order of any district court, the~~
10 ~~director shall prepare a prerelease report which the court.~~
11 ~~shall use to determine the accused's qualifications for bail.~~
12 ~~The report shall include available information about the~~
13 ~~accused's family ties, employment, financial resources,~~
14 ~~character, physical and mental condition, the length of his~~
15 ~~residence in the community, his record of convictions, his~~
16 ~~record of appearance at court proceedings or of flight to avoid~~
17 ~~prosecution or failure to appear at court proceedings and any~~
18 ~~history of drug or alcohol abuse] victim impact information,~~
19 record of prior convictions and the results of any validated
20 risk and needs assessments that may have been administered, and
21 such 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 5. Section 31-21-14 NMSA 1978 (being Laws 1955,

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1 Chapter 232, Section 17, as amended) is amended to read:

2 "31-21-14. ~~[RETURN OF]~~ PAROLE ~~[VIOLATOR]~~ VIOLATIONS.--

3 A. At any time during release on parole:

4 (1) the board or the director may issue a
5 warrant for the arrest of the ~~[released prisoner]~~ parolee for a
6 non-technical violation. ~~[of any of the conditions of release~~
7 ~~or issue a notice to appear to answer a charge of violation.~~
8 ~~The notice shall be served personally upon the prisoner]~~ The
9 warrant shall authorize the ~~[superintendent]~~ warden of the
10 institution from which the ~~[prisoner]~~ parolee was released to
11 return the ~~[prisoner]~~ parolee to the ~~[actual]~~ physical custody
12 of the institution or to any other ~~[suitable]~~ detention
13 facility designated by the board or the director. If the
14 ~~[prisoner]~~ parolee is out of the state, the warrant shall
15 authorize the ~~[superintendent]~~ warden to return ~~[him]~~ the
16 parolee to the state; or

17 ~~[B.]~~ (2) the director may arrest the
18 ~~[prisoner]~~ parolee without a warrant or may deputize ~~[any]~~ an
19 officer with power of arrest to do so by giving ~~[him]~~ the
20 officer a written statement ~~[setting forth]~~ that the ~~[prisoner]~~
21 parolee has, in the judgment of the director, ~~[violated the~~
22 ~~conditions of his release]~~ committed a non-technical violation.
23 Where an arrest is made without a warrant, the ~~[prisoner]~~
24 parolee shall not be returned to the institution unless
25 authorized by the director or the board.

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1 B. Pending hearing as provided by law upon ~~[any]~~ a
2 charge of non-technical violation, the ~~[prisoner]~~ parolee shall
3 remain incarcerated in the institution.

4 C. Upon arrest and detention for a non-technical
5 violation, the board shall cause the ~~[prisoner]~~ parolee to be
6 promptly brought before it for a parole revocation hearing on
7 the ~~[parole]~~ non-technical violation charged, under rules ~~[and~~
8 ~~regulations]~~ the board may adopt.

9 D. If the non-technical violation is established,
10 the board may continue or revoke the parole, impose detention
11 for a fixed term up to ninety days, which shall be counted as
12 time served under the sentence, or enter any other order as it
13 sees fit.

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

17 F. If it appears that ~~[he]~~ the parolee has
18 ~~[violated the provisions of his release]~~ committed a non-
19 technical violation, the board shall determine whether the time
20 from the date of the violation to the date of ~~[his]~~ the
21 parolee's arrest, or any part of it, shall be counted as time
22 served under the sentence.

23 G. At any time during release on parole, the board
24 or the director may issue a notice to appear to answer a charge
25 of a technical violation. The notice shall be served

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1 personally upon the parolee and shall initiate a technical
2 violation hearing in accordance with Section 8 of this 2019
3 act."

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

8 "31-21-15. [~~RETURN OF~~] PROBATION [~~VIOLATOR~~] VIOLATIONS.--

9 A. At any time during probation:

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

16 [~~(2) the court may issue a notice to appear to~~
17 ~~answer a charge of violation. The notice shall be personally~~
18 ~~served upon the probationer; or~~

19 ~~(3)]~~ (2) the director may arrest a probationer
20 without a warrant or may deputize [~~any~~] an officer with power
21 of arrest to do so by giving the officer a written statement
22 [~~setting forth~~] that the probationer has, in the judgment of
23 the director, [~~violated the conditions of the probationer's~~
24 ~~release~~] committed a non-technical violation. The written
25 statement, delivered with the probationer by the arresting

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1 officer to the official in charge of a county jail or other
2 place of detention, is sufficient warrant for the detention of
3 the probationer.

4 B. Upon the probationer's arrest and detention for
5 a non-technical violation:

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

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

12 (2) the court shall hold a probation
13 revocation hearing on the non-technical violation charged.

14 C. If the non-technical violation is established at
15 the probation revocation hearing:

16 (1) the sanction for the non-technical
17 violation shall be commensurate with the seriousness of the
18 violation and not a punishment for the offense for which the
19 probationer was placed on probation; and

20 (2) the court may continue or revoke the
21 probation, impose detention for a fixed term up to ninety days,
22 which shall be counted as time served under the sentence, or
23 enter any other order as it sees fit.

24 D. At any time during probation, the court may
25 issue a notice to appear to answer a charge of technical

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1 violation. The notice shall be personally served upon the
2 probationer and shall initiate a technical violation hearing in
3 accordance with Section 8 of this 2019 act.

4 E. If the technical violation is established at the
5 technical violation hearing, the court may:

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

7 (2) revoke the probation and either:

8 (a) order a new probation with any
9 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978;
10 or

11 (b) require the probationer to serve the
12 balance of the sentence imposed or any lesser sentence; or

13 (3) if imposition of sentence was deferred,
14 the court may impose any sentence that might originally have
15 been imposed, but credit shall be given for time served on
16 probation.

17 ~~[G.]~~ F. If it is found that a warrant for the
18 return of a probationer cannot be served, the probationer is a
19 fugitive from justice.

20 G. After hearing ~~[upon return]~~, if it appears that
21 the probationer has violated the provisions of the
22 probationer's release, the court shall determine whether the
23 time from the date of violation to the date of the
24 probationer's arrest, or any part of it, shall be counted as
25 time served on probation.

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1 H. For the purposes of this [~~subsection~~] section,
2 "probationer" means a person convicted of a crime by a
3 [~~district, metropolitan, magistrate or municipal~~] court and
4 released without imprisonment under a suspended or deferred
5 sentence and subject to conditions.

6 ~~[D.]~~ I. The board shall budget funds to cover
7 expenses of returning probationers to the court.

8 J. The sheriff of the county in which the
9 probationer was convicted is the court's agent in the
10 transportation of the probationer, but the director, with the
11 consent of the court, may utilize other state agencies for this
12 purpose when it is in the best interest of the state."

13 **SECTION 7.** A new section of the Probation and Parole Act
14 is enacted to read:

15 "[NEW MATERIAL] INCENTIVES--SANCTIONS FOR TECHNICAL
16 VIOLATIONS.--

17 A. The corrections department shall create,
18 maintain and fully implement an incentives and sanctions system
19 to guide responses to negative and positive behavior by
20 probationers and parolees under supervision by the department.
21 The system shall provide for graduated responses to technical
22 violations of supervision conditions, in a swift, certain and
23 proportional manner, and include guidance and procedures to
24 determine when and how to:

- 25 (1) request a warrant;

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1 (2) initiate a hearing; and

2 (3) seek departmental approval to use
3 custodial interventions.

4 B. To implement and continuously improve the
5 incentives and sanctions system, the corrections department
6 shall:

7 (1) provide information and training on the
8 system for probation and parole officers, supervisors and
9 members and staff of the board;

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

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

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

21 (5) collect data relating to placement
22 decisions based on the system; and

23 (6) aggregate collected data and provide a
24 report to the appropriate legislative interim committee dealing
25 with courts, corrections and justice issues every two years.

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

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

12 E. The incentives and sanctions system shall apply
13 to persons whose probation or parole commences subsequent to
14 the effective date of this 2019 act and to all persons on
15 probation or parole on the effective date of this 2019 act."

16 **SECTION 8.** A new section of the Probation and Parole Act
17 is enacted to read:

18 "[NEW MATERIAL] TECHNICAL VIOLATION HEARINGS.--

19 A. If a probation or parole officer seeks to impose
20 detention for a technical violation, the officer shall initiate
21 a technical violation hearing by providing written notice of
22 intent to impose detention to the probationer or parolee not
23 less than ten business days before the hearing.

24 B. A hearing officer designated by the corrections
25 department shall conduct the hearing in accordance with rules

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1 promulgated by the department.

2 C. The probationer or parolee is entitled to
3 counsel at the hearing.

4 D. If the hearing officer determines by a
5 preponderance of the evidence that the probationer or parolee
6 has committed a technical violation, the hearing officer shall
7 consult the incentives and sanctions system to determine an
8 appropriate response.

9 E. If the hearing officer determines by a
10 preponderance of the evidence that the probationer or parolee
11 has committed a non-technical violation, the hearing officer
12 shall refer the case to the court or board as appropriate."