

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR  
SENATE BILL 84

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

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:

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SJC/SHPAC/SB 84

"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;

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

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

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

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

~~G. "institution" means the state penitentiary and~~

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~~any other similar state institution hereinafter created;~~

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

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

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

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

H. "technical violation of probation" or "technical violation of parole" means a violation of a condition of probation or parole that does not Sfl1→

~~either create a threat to the~~ ←Sfl1 HCPAC→HCPAC→~~either create a threat to the~~ ←HCPAC HCPAC→Sfl1→:

~~(1) create a threat to the probationer or parolee,~~

~~(2) create a threat to others,~~

~~(3) violate a condition that the probationer or parolee refrain from having contact with a victim or witness, or~~

~~(4) constitute a new crime.~~ ←Sfl1←HCPAC probationer or parolee or others or does not constitute a new

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~~criminal charge.~~ ←HCPAC HCPAC→:

"(1) create a threat to the probationer or parolee;

(2) create a threat to others;

(3) violate a condition that the probationer or parolee refrain from having contact with a victim or witness; or

(4) constitute a new crime." ←HCPAC

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

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

A. At any time during release on parole, the board or the director may issue a warrant for the arrest of the ~~[released prisoner]~~ parolee for ~~[violation of any of the conditions of release]~~ a standard violation of parole or issue a notice to appear to answer a charge of any violation. The notice shall be served personally upon the ~~[prisoner]~~ parolee. The warrant shall authorize the ~~[superintendent]~~ warden of the institution from which the ~~[prisoner]~~ parolee was released to return the ~~[prisoner]~~ parolee to the actual custody of the institution or to any other suitable detention facility designated by the board or the director. If the ~~[prisoner]~~ parolee is out of the state, the warrant shall authorize the ~~[superintendent]~~ warden to return ~~[him]~~ the parolee to the state. For a technical violation of parole, the director shall

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issue a notice to appear served personally upon the parolee unless the director authorizes HCPAC→~~arrest~~←HCPAC HCPAC→~~an arrest warrant~~←HCPAC based on a flight risk or danger to the community.

B. The director may arrest the [~~prisoner~~] parolee without a warrant or may deputize [~~any~~] an officer with power of arrest to do so by giving [~~him~~] the officer a written statement setting forth that the [~~prisoner~~] parolee has, in the judgment of the director, [~~violated the conditions of his release~~] committed a standard violation of parole and the parolee presents a flight risk or danger to the community. Where an arrest is made without a warrant, the [~~prisoner~~] parolee shall not be returned to the institution unless authorized by the director or the board. Pending hearing as provided by law upon [~~any~~] a charge of a standard violation of parole, the [~~prisoner~~] parolee presenting a flight risk or danger to the community shall remain incarcerated in the institution.

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

D. If a standard violation of parole is

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

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

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

(3) for a third technical violation of parole, the director shall not impose a sanction of more than seven days of incarceration; and

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

and provided further that the sanction shall be commensurate with the seriousness of the violation and not a punishment for the offense of conviction.

[D.] E. A [~~prisoner~~] parolee for whose return a warrant has been issued shall, if it is found that the warrant cannot be served, be a fugitive from justice. If it appears that [~~he~~] the parolee has violated the provisions of [~~his~~] the parolee's release, the board shall determine whether the time from the date of the violation to the date of [~~his~~] the parolee's arrest, or any part of it, shall be counted as time served under the sentence."

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

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

A. At any time during probation:

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

(2) the court may issue a notice to appear to answer a charge of any violation and shall issue the notice for

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a technical violation of probation unless the HCPAC→**director**  
~~authorizes arrest~~←HCPAC HCPAC→**court issues an arrest**  
**warrant**←HCPAC based on a flight risk or danger to the  
community. The notice shall be personally served upon the  
probationer; or

(3) the director may arrest a probationer without warrant or may deputize any officer with power of arrest to do so by giving the officer a written statement setting forth that the probationer has, in the judgment of the director, [~~violated the conditions of the probationer's release~~] committed a standard violation of probation. The written statement, delivered with the probationer by the arresting officer to the official in charge of a county jail or other place of detention, is sufficient warrant for the detention of the probationer. Upon the probationer's arrest and detention, the director shall immediately notify the court and submit in writing a report showing in what manner the probationer has violated the conditions of release.

B. Following service of a notice to appear or arrest pursuant to Subsection A of this section, the court shall then hold a hearing, which may be informal, on the violation charged. If [~~the~~] a standard violation of probation is established, the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA

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1978 or require the probationer to serve the balance of the sentence imposed or any lesser sentence; provided that the sanction shall be commensurate with the seriousness of the violation and not a punishment for the offense of conviction.

If a technical violation of probation is established:

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

(2) for a second technical violation of probation, the court shall not impose a sanction of more than five days of community service, restrictive curfew, behavioral health treatment or other non-detention sanction;

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

(4) for a fourth or subsequent technical violation of probation, the court may continue the original probation or revoke the probation and either order a new probation with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978 or require the probationer to serve the balance of the sentence imposed or any lesser sentence; provided that the sanction shall be commensurate with the seriousness of the violation and not a punishment for the offense of conviction.

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

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

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

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