

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis:

SB 39 establishes a difference between standard and technical violations of parole, with differing treatment for violations of each. SB 39 provides a definition in law of absconding, and makes changes to various provisions of the Probation and Parole Act and other statutes concerning probation to integrate these changes.

Three new definitions are added to the Probation and Parole Act (while there is much underscoring and strikethrough in the Definitions section of the Act in this bill, most of it is put the definitions in this Section in alphabetical order). Absconding is defined to mean “that a person under supervision willfully makes the person's whereabouts unknown or willfully fails to report as ordered with a purpose to evade compliance with the person's supervision obligations by making the person's self unavailable for supervision, which may be inferred from surrounding circumstances, and when a person's failure to appear without notice for three or more consecutive supervision appointments of which the person had actual notice, shall provide a rebuttable presumption of that purpose.” A standard violation of probation or of parole is defined to mean “any violation: (1) that violates a condition that the probationer or parolee refrain from having contact with a victim or witness; (2) that constitutes absconding; (3) that constitutes a new crime not constituting a technical violation; or (4) for a sex offender or serious violent offender pursuant to Subsection C of Section 31-20-5 NMSA 1978, any contact with the victim or any violation of a condition designated by the sentencing court as a standard violation.” A technical violation of probation or of parole is defined to mean “any willful violation of conditions of probation or parole supervision that is not a standard violation, including a positive chemical test for alcohol or controlled substance consumption or missing a scheduled supervision appointment.”

In Section 3 of the bill, changes are made to Section 31-21-14, concerning return of a parole violator, to clarify what happens when someone on parole commits a standard violation versus a technical violation. In effect, the present system of handling a violation of a condition of parole would now apply to the more limited universe of standard violations. For a technical violation, a notice to appear is to be issued to the parolee, unless an arrest warrant is authorized because of flight risk or a danger to the community.

If the Parole Board establishes that a standard violation has occurred, the Board would under SB 39 be able to impose detention for a fixed term of up to 90 days, which counts as time served, in

addition to the present law allowing the Board to impose another order as it sees fit. For a technical violation of parole, SB 39 outlines the following graduated sanctions:

1) for a first technical violation, the Board 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, the Board 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, the Board shall not impose a sanction of more than seven days of incarceration; and

4) for a fourth or subsequent technical violation, the Board may impose incarceration for a fixed term up to 30 days, which shall be counted as time served under the sentence, or enter any other order as it sees fit.

SB 39 also adds that the Board may impose incarceration beyond the terms outlined if they find that additional detention is necessary for the parolee's rehabilitation or public safety.

Similarly, in Section 4 of SB 39, changes are made to Section 31-21-15, concerning return of a probation violator, to clarify what happens when someone on probation commits a standard violation versus a technical violation. As with parole, in effect, the present system of handling a violation of a condition of probation would now apply to the more limited universe of standard violations. For a technical violation, a notice to appear is to be issued to the probationer, unless an arrest warrant is authorized because of flight risk or a danger to the community.

Standard violations of probation are handled as under present law. Technical violations of probation have the following restrictions:

1) for the first technical violation, 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 the second technical violation, 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, the Court shall not impose a sanction of more than three days of incarceration; and

4) for a fourth technical violation, 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.

However, as with parole, the Court may impose incarceration beyond the terms outlined if the Court finds that additional detention is necessary for the probationer's rehabilitation or public safety.

SB 39 also amends Section 31-20-5, concerning placing a defendant on probation, so that a court may designate conditions that would constitute a standard violation of probation under a suspended, deferred, or conditional discharge from a plea or conviction that includes a sex offense or a serious violent offense.

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

SIGNIFICANT ISSUES

While providing a definition of “absconding” would provide welcome clarity to the laws concerning probation and parole, the definition in SB 39 is unwieldy and confusing.

The new schema for technical violations of probation and parole might not have the effect that the bill seems to be driving at as the Board may impose incarceration beyond the terms outlined if they find that additional detention is necessary for the parolee's rehabilitation or public safety – this is an exception that could swallow the rule of how to handle technical violations. Similarly, the exception to issuing a notice to appear versus a warrant for arrest for a technical violation of parole or probation if the person is considered a flight risk or danger to the community might also swallow the rule that one only receive a notice to appear for a technical violation.

In the schema for technical violations, for parole, the sanction is seven days incarceration for the third technical violation, while for probation the sanction is three days of incarceration. The reason for this inconsistency is not clear.

Returns for parole violations make up a significant proportion of new admissions. For instance, in FY 2022, parole violations made up over 30% of new admissions to NMCD for both male and females. See the Sentencing Commission’s New Mexico Prison Population Forecast: FY 2023-2033, Tables 8 and 9 (p. 10) (available at: <https://nmssc.unm.edu/reports/2023/prison-population-forecast-fy2023-fy2033.pdf>).

The National Conference of State Legislatures’ “Legislative Primer Series on Community Supervision: Limiting Incarceration in Response to Technical Violations” (June 2022) recommends, “A clear definition in law contributes to transparency and consistency by ensuring that the individual under supervision, their supervision officer and the courts all have the same understanding of what constitutes a technical violation” (available at: <https://www.ncsl.org/civil-and-criminal-justice/community-supervision-limiting-incarceration-in-response-to-technical-violations>). The definition proposed on SB 39 is more subjective than clear.

The NCSL primer also notes, “There are 34 states with statutory incarceration maximums for probation violations and 24 states with parole maximums. In most of those states, the caps are applied uniformly for all types of supervision.” The schema outlined in SB 39 is largely, but not entirely, a uniform scheme for probation and parole.

Addressing technical violations of probation and parole is also in the list of suggested reforms in Pew’s “Policy Reforms Can Strengthen Community Supervision: A framework to improve probation and parole” (April 2020) (available at: <https://www.pewtrusts.org/en/research-and-analysis/reports/2020/04/policy-reforms-can-strengthen-community-supervision>).

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS