

LFC Requester:	Scott Sanchez
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**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 01/18/2024
Bill No: SB 39

Sponsor: Bill B. O’Neil, Antonio Maestas,
Gail Chasey
Short Title: Limit Incarceration for
Technical Violations

Agency Name and Code Number: 760-New Mexico Adult Parole Board
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
0	0	0	N/A	N/A

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	0	0	0	N/A	N/A	N/A

(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: Amends the Probation and Parole Act by limiting incarceration for “technical violations” of probation and parole. Establishes standards for two new levels of violation: Standard Violation and a Technical Violation of parole or probation and imposes limitations on sanctions that may be imposed for each, particularly for a technical violation.

STANDARD VIOLATION (for a Sex Offense or a Serious Violent Offense).

The court is given discretionary authority to designate specific and particular conditions that justify a “standard violation” for a defendant serving a period of probation under a suspended, deferred or condition discharge from a plea or conviction that includes either: (a) a sex offense, or (b) a serious violent offense. The court may order that violating these conditions constitutes a “standard violation” if it finds by clear and convincing evidence that the “additional conditions” are necessary to ensure public safety or the safety of a particular individual.

DEFINITIONS

The act proposes four new definitions, three of which are key to understanding the new sentencing criteria being proposed by the bill:

"absconding" means 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;

"standard violation of probation" or "standard violation of parole" means 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 Sec. 31-20-5, any contact with the victim or any violation of a condition designated by the sentencing court as a standard violation.

"technical violation of probation" or "technical violation of parole" means 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.

CRITERIA FOR RETURN OF PAROLE VIOLATOR.

FOR A STANDARD VIOLATION, the board or director may issue a warrant for the arrest of a parole violator which authorizes the warden to return the parolee to the actual custody of the institution from which released, or any other suitable detention facility designated by the board or the director. If the parolee is out of state, the warrant shall authorize the warden to return the parolee to the state.

FOR A TECHNICAL VIOLATION, the director shall issue a notice to appear served personally upon the parolee unless the director authorizes an arrest warrant based on a flight risk or danger to the community.

The director may arrest the parolee without a warrant or deputize an officer with power of arrest by setting forth in writing that the parolee has, in the judgment of the director, committed a Standard Violation of parole and the parolee presents a flight risk or danger to the community. When the arrest occurs without a warrant, the parolee "shall not be returned to the institution" unless authorized by the board or director. However, the bill then takes a seemingly contradictory turn by stating that, pending hearing on a charge of a Standard Violation of parole, the parolee presenting a flight risk or danger to the community "shall remain incarcerated in the institution." (See, p.8 of bill, Subsec. B.)

Upon arrest and detention or service of a notice to appear, the board is required to promptly hold a parole revocation hearing on the "parole violation charge."

If a Standard Violation of Parole is established, the board is given the discretionary authority to continue to revoke the parole, or to impose detention for a fixed term up to 90 days, which shall be counted as time served under the sentence, or enter another order as it sees fit.

PAROLE TECHNICAL VIOLATION HEARING SANCTIONS

If a Technical Violation of Parole is established before the board at a "technical violation hearing," the board shall not impose a sanction for more than 3 days of community service for a first violation, 5 days of community service for a second violation, and 7 days of community service for a third violation, and restrictive curfew, behavioral health treatment or other non-detention sanction for first, second or third violations. For a fourth or subsequent technical violation, the board is given discretion to 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. The board may impose incarceration beyond this if it finds that additional detention is necessary for the parolee's rehabilitation or public safety.

CRITERIA FOR RETURN OF PROBATION VIOLATOR

FOR A STANDARD VIOLATION, the court may issue a warrant for the arrest of a probationer which authorizes return to the custody of the court or to any suitable detention

facility designated by the court. The court may issue a notice to appear to answer a charge of any violation and shall issue the notice for a Technical Violation of probation unless the court issues an arrest warrant based on a flight risk or danger to the community. The notice shall be personally served on the probationer.

The director may arrest a probationer without a warrant or deputize an officer with power of arrest to do so by setting forth in writing that the probationer has, in the judgment of the director, committed a Standard Violation of probation. As under existing law, the written statement is sufficient warrant for the arresting officer to have the probationer placed in a county jail or other place of detention. Upon arrest and detention, the director shall immediately notify the court and submit a written report showing the manner in which the probationer has violated the conditions of release.

Following service of a notice to appear or arrest, the court shall hold a hearing, which may be informal, on the violation charged probation to serve the balance of the sentence imposed, or any lesser sentence, EXCEPT that the court:

If a standard violation of probation is established, the court may continue the original probation or revoke the probation, order a new probation with new conditions, or require the probationer to serve the balance of the sentence, provided that court:

FOR A TECHNICAL VIOLATION, the court shall not impose a sanction of more than 3 days of community service for a first violation, 5 days of community service for a second violation, along with restrictive curfew, behavioral health treatment or other non-detention sanction for either the first or second violations. For a third violation, the court shall not impose a sanction of more than 3 days of incarceration. And for a fourth or subsequent violation, the court may continue the original probation or revoke it and either order a new probation with any condition provided for in Sec. 31-20-5 or 31-20- 6 or require the probationer to serve the balance of the sentence imposed or any lesser sentence.

The court may impose incarceration beyond the terms outlined if it finds that additional detention is necessary for the probationer's rehabilitation or public safety.

If the sentence was deferred, the court may impose any sentence that might originally have been imposed but credit shall be given for time served on probation (and the sentence is subject to sentencing limits imposed for Technical Violations in Subsec. B of Sec. 31-21-15).

FISCAL IMPLICATIONS

Section 3 of the bill authorizes the board and the director to issue warrants, but it does not indicate who is responsible for serving the warrant. This distinction is necessary to determine who is responsible. If this distinction is determined to be the Adult Parole Board this would create additional fiscal impact on the Board to determine if additional staff would be needed to carry out the function.

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

SIGNIFICANT ISSUES

None

PERFORMANCE IMPLICATIONS

In Section 2 the new definition of permanently incapacitated inmate may include additional hearings completed by the Board and the time frame in which they are completed.

ADMINISTRATIVE IMPLICATIONS

Section 3 of the bill authorizes the board and the director to issue warrants, but it does not indicate who is responsible for serving the warrant. This distinction is necessary to determine who is responsible.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

N/A

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status Quo

AMENDMENTS

None