

HOUSE BILL 564

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

INTRODUCED BY

Antonio Maestas and Gail Chasey and Sander Rue

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO PROBATION AND PAROLE; PROVIDING CLARIFICATION AND GUIDANCE FOR PROBATION AND PAROLE; ALLOWING FOR A PERSON ON PROBATION TO HAVE THE TIME REQUIRED FOR PROBATION TO BE DECREASED FOR GOOD BEHAVIOR; REPEALING SECTION 31-21-25.1 NMSA 1978 (BEING LAWS 1994, CHAPTER 21, SECTION 3).

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.--

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A. The purpose of probation is to enforce victim restitution, hold persons accountable for their criminal conduct, promote a person's reintegration into law-abiding society and reduce the risks that the person 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 the period of deferment or suspension [~~if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish~~] SJC→**if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish**←SJC.

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

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

[B-] D. If a defendant is required to serve a

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period of probation subsequent to a period of incarceration:

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

(2) [~~in the event that~~] if the defendant violates any condition of that parole and the violation is not sanctioned pursuant to the provisions of Section 10 of this 2019 act, the parole board shall cause [~~him~~] the defendant to be brought before it pursuant to the provisions of Section 31-21-14 NMSA 1978 and may make any disposition authorized pursuant to that section and, if parole is revoked, the period of parole served in the custody of a correctional facility shall not be credited as time served on probation.

E. A person SJC→, except a person convicted of a sex offense provided in Subsection I of Section 29-11A-3 NMSA 1978 or a serious violent offense provided in Subparagraphs (a) through (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA 1978,←SJC who has been placed on supervised probation SJC→by a district or magistrate court judge←SJC as provided for in this section shall, after one year spent on supervised probation, have thirty days of the person's supervised probation changed to unsupervised probation for every thirty days served without a probation violation; provided that a

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person shall not be eligible for a reduction in supervised probation time under this subsection if the person is on parole and has time on parole credited toward probation time pursuant to Paragraph (1) of Subsection D of this section."

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

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

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

B. The corrections department shall:

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

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

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(3) recommend and enforce conditions that include cognitive-behavioral programming to address criminal thinking and address basic needs and transitional requirements, such as housing, employment, medical and mental health services and transportation; and

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

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

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

~~A. "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;~~

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

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

~~E. "Director" means the director of the field~~

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~~services division of the corrections department or any employee designated by him; and]~~

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

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

C. "board" means the parole board;

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

E. "geriatric inmate" means a person who:

(1) is under sentence to or confined in a prison or other correctional institution under the control of the corrections department;

(2) is sixty-five years of age or older;

(3) suffers from a chronic infirmity, illness or disease related to aging; and

(4) does not constitute a danger to the person's own self or to society;

F. "institution" means the state penitentiary and any other similar state institution;

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

H. "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;

I. "permanently incapacitated inmate" means a person who:

(1) is under sentence to or confined in a prison or other correctional institution under the control of the corrections department;

(2) by reason of an existing medical condition, is permanently and irreversibly physically incapacitated; and

(3) does not constitute a danger to the person's own self or to society;

J. "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;

K. "technical violation" means a violation of the conditions of probation or parole supervision other than arrest for a new felony or misdemeanor offense or absconding; and

L. "terminally ill inmate" means a person who:

(1) is under sentence or confined in a prison

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or other correctional institution under the control of the corrections department;

(2) has an incurable condition caused by illness or disease that would, within reasonable medical judgment, produce death within six months; and

(3) does not constitute a danger to the person's own self or to society."

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

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

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

~~B. Upon the order of any district court, the director shall prepare a prerelease report which the court shall use to determine the accused's qualifications for bail. The report shall include available information about the accused's family ties, employment, financial resources, character, physical and mental condition, the length of his residence in the community, his record of convictions, his record of appearance at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings and any history of drug or alcohol abuse] the state personal identification number, victim impact information, record of prior convictions and the results of any validated risk and~~

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needs assessments that may have been administered, and such other information as the court may request.

[G.] B. All local and state law enforcement agencies shall furnish to the director any requested criminal records."

HJC → ~~SECTION 5. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:~~

~~"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--~~

~~A. An inmate of an institution who was sentenced to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:~~

~~(1) interview the inmate at the institution where the inmate is committed;~~

~~(2) consider all pertinent information concerning the inmate, including:~~

~~(a) the circumstances of the offense;~~

~~(b) mitigating and aggravating circumstances;~~

~~(c) whether a deadly weapon was used in the commission of the offense;~~

~~(d) whether the inmate is a habitual offender;~~

~~(e) the reports filed under Section~~

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~~31-21-9 NMSA 1978; and~~

~~(f) the reports of such physical and mental examinations as have been made while in an institution;~~

~~(3) make a finding that a parole is in the best interest of society and the inmate; and~~

~~(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.~~

~~If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.~~

~~B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.~~

~~C. An inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.~~

~~D. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a~~

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~~first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.~~

~~E. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall consult a validated risk and needs assessment, if provided by the corrections department, when deciding what conditions of parole to impose. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not~~

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~~have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.~~

~~F. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.~~

~~G. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of~~

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parole:

~~(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and~~

~~(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.~~

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~~H. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program as provided by the Parole Board Act."~~←HJC

SJC→HJC→SECTION 5. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

~~"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--~~

~~A. An inmate of an institution who was sentenced to life imprisonment [becomes eligible for a parole hearing] shall be paroled after the inmate has served thirty years of the sentence [Before ordering the parole of an inmate sentenced to life imprisonment] unless the board makes a finding that the inmate is unable or unwilling to fulfill the obligations of a law-abiding citizen. The board shall enter specific findings in support of its decision after:~~

~~(1) [interview] interviewing the inmate at the institution where the inmate is committed; and~~

~~(2) [consider] considering all pertinent information concerning the inmate, including~~

~~{(a) the circumstances of the offense;~~

~~(b) mitigating and aggravating~~

~~circumstances;~~

~~(c) whether a deadly weapon was used in~~

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~~the commission of the offense;~~

~~(d) whether the inmate is a habitual offender;~~

~~(e) the reports filed under Section 31-21-9 NMSA 1978; and~~

~~(f) the] reports of [such physical and] mental examinations [as have been] of the inmate made while the inmate was held in an institution~~

~~[(3) make a finding that a parole is in the best interest of society and the inmate; and~~

~~(4) make a finding that] and whether the inmate is able and willing to fulfill the obligations of a law-abiding citizen.~~

~~B. The board may consider the offense for which the inmate was convicted but shall not deny parole to an inmate who was sentenced to life imprisonment based solely on the offense for which the inmate was convicted.~~

~~G. If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.~~

~~[B.] D. Unless the board finds that it is in the best interest of society and the parolee to reduce the period~~

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~~of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.~~

~~{C.} E. Only an inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is [not eligible] ineligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.~~

~~{D.} F. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department that exceeds one year or has agreed to and been ordered to serve a period of parole by the court shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served [the] a sentence of imprisonment imposed by the court in an institution designated by the corrections department that exceeds one year or has agreed to and been ordered to serve a period of parole by the court shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.~~

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~~[E.] G. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall consult a validated risk and needs assessment, if provided by the corrections department, when deciding what conditions of parole to impose. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to~~

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~~accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also [personally] apprise the inmate in person of the conditions of parole and the inmate's duties relating thereto.~~

~~[F.] H. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.~~

~~[G.] I. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:~~

~~(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The~~

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~~defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and~~

~~(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.~~

~~[H.] J. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric parole program [as provided by the Parole Board Act]."~~ ←HJG ←SJC

SJC → SECTION 5. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

"31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

A. An inmate of an institution who was sentenced to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before

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ordering the parole of an inmate sentenced to life imprisonment, the board shall:

(1) interview the inmate at the institution where the inmate is committed;

(2) consider all pertinent information concerning the inmate [~~including:~~

~~(a) the circumstances of the offense;~~

~~(b) mitigating and aggravating circumstances;~~

~~(c) whether a deadly weapon was used in the commission of the offense;~~

~~(d) whether the inmate is a habitual offender;~~

~~(e) the reports filed under Section 31-21-9 NMSA 1978; and~~

~~(f) the reports of such physical and mental examinations as have been made while in an institution];~~

(3) make a finding that a parole is in the best interest of society and the inmate; and

(4) make a finding that the inmate is able and willing to fulfill the obligations of a law-abiding citizen.

B. After a hearing, the board shall enter specific findings in support of its decision and deliver the findings in writing to the inmate.

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C. If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

[B-] D. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

[G-] E. Only an inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is ~~[not eligible]~~ ineligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

[D-] F. Except for certain sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department that exceeds one year or has agreed and been ordered to serve a period of parole by the court shall be required to undergo a two-year period of parole. An inmate who was convicted of a

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fourth degree felony and who has served [the] a sentence of imprisonment imposed by the court in an institution designated by the corrections department that exceeds one year or has agreed and been ordered to serve a period of parole by the court shall be required to undergo a one-year period of parole. During the period of parole, the person shall be under the guidance and supervision of the board.

[E.] G. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall consult a validated risk and needs assessment, if provided by the corrections department, when deciding what conditions of parole to impose. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole,

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until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also [personally] apprise the inmate in person of the conditions of parole and the inmate's duties relating thereto.

[F-] H. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

[G-] I. Pursuant to the provisions of Section 31-18-15 NMSA 1978, the board shall require the inmate as a condition of parole:

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections

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department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to the inmate's arrest, prosecution or conviction.

[H-] J. The provisions of this section shall apply to all inmates except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and geriatric



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parole program [as provided by the Parole Board Act]."←SJC

SECTION 6. Section 31-21-13.1 NMSA 1978 (being Laws 1988, Chapter 62, Section 3, as amended) is amended to read:

"31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

A. As used in this section, "intensive supervision programs" means programs that provide highly structured and intense supervision, with stringent reporting requirements, of certain individuals who represent an excessively high assessment of risk of violation of probation or parole, emphasize meaningful rehabilitative activities and reasonable alternatives without seriously increasing the risk of recidivist crime and facilitate the payment of restitution by the offender to the victim. "Intensive supervision programs" [~~include~~] includes house arrest programs or electronic surveillance programs or both.

B. The corrections department shall implement and operate intensive supervision programs in various local communities. The programs shall provide services for appropriate individuals by probation and parole officers of the corrections department. The corrections department shall promulgate rules [~~and regulations~~] to provide that the officers providing these services have [~~a maximum case load of forty offenders~~] the training, resources and case loads that enable them to operate effectively and to provide for offender selection and other criteria. The corrections department may

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cooperate with all recognized law enforcement authorities and share all necessary and pertinent information, records or documents regarding probationers or parolees in order to implement and operate these intensive supervision programs.

C. For purposes of this section, a judge contemplating imposition of an intensive supervision program for an individual shall consult with the adult probation and parole division of the corrections department and [~~consider the recommendations before imposing such probation~~] review the results of the validated risk and needs assessment. The adult probation and parole division of the corrections department shall recommend only those individuals who score as high risk and who would have otherwise been recommended for incarceration for intensive supervision programs. [~~A judge has discretion to impose an intensive supervision program for an individual, regardless of recommendations made by the adult probation and parole division.~~] SJC→A judge has discretion to impose an

intensive supervision program for an individual, regardless of recommendations made by the adult probation and parole division←SJC SJC→, only if a validated risk and needs assessment has been provided to the judge and considered in the decision to impose an intensive supervision program.←SJC

Inmates SJC→~~who are assessed as high risk on a validated risk and needs assessment and who are~~←SJC eligible for parole or SJC→are←SJC within twelve months of eligibility for parole, or

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inmates who would otherwise remain in a correctional institution for lack of a parole plan or those parolees whose parole the board would otherwise revoke, are eligible for intensive supervision programs. The provisions of this section do not limit or reduce the statutory authority vested in probation and parole supervision as defined by any other section of the Probation and Parole Act.

D. There is created in the state treasury the "corrections department intensive supervision fund" to be administered by the corrections department upon vouchers signed by the secretary of corrections. Balances in the corrections department intensive supervision fund shall not revert to the general fund. Beginning July 1, 1988, the intensive supervision programs established pursuant to this section shall be funded by those supervision costs collected pursuant to the provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The corrections department is specifically authorized to hire additional permanent or term ~~[full-time equivalent]~~ full-time-equivalent positions for the purpose of implementing the provisions of this section."

SECTION 7. 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]~~ VIOLATIONS.--

A. At any time during release on parole:

(1) the board or the director may issue a

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warrant for the arrest of the [~~released prisoner for~~] parolee to answer a charge of a non-technical violation. [~~of any of the conditions of release or issue a notice to appear to answer a charge of violation. The notice shall be served personally upon the prisoner~~] 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~~] physical 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; or

[B.] (2) 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 non-technical violation. 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.

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

C. Upon arrest and detention for a non-technical

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violation, the board shall cause the [~~prisoner~~] parolee to be promptly brought before it for a parole revocation hearing on the [~~parole~~] non-technical violation charged, under rules [~~and regulations~~] the board may adopt.

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

[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.

F. If it appears that [~~he~~] the parolee has [~~violated the provisions of his release~~] committed a non-technical violation, 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.

G. At any time during release on parole, the board or the director may issue a notice to appear to answer a charge of a technical violation. The notice shall be served personally upon the parolee and shall initiate a technical violation process in accordance with Section 11 of this 2019 act."

SECTION 8. Section 31-21-15 NMSA 1978 (being Laws 1963, .211435.5GLG

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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]~~ VIOLATIONS.--

A. At any time during probation:

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

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

~~[(3)]~~ (2) the director may arrest a probationer without a warrant or may deputize ~~[any]~~ an 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 non-technical violation. 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.

B. Upon the probationer's arrest and detention for

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a non-technical violation:

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

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

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

C. If the non-technical violation is established at the probation revocation hearing SJC→: , ←SJC

~~SJC→(1) the sanction for the non-technical violation shall be commensurate with the seriousness of the violation and not a punishment for the offense for which the probationer was placed on probation; and~~ ←SJC

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

D. At any time during probation, the court may issue a notice to appear to answer a charge of technical violation. The notice shall be personally served upon the probationer and shall initiate a technical violation

SJC→~~process in accordance with Section 11 of this 2019 act~~ hearing ←SJC.

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E. If the technical violation is established before the court at a technical violation hearing, SJC→the sanction for the technical violation shall be commensurate with the seriousness of the violation and not a punishment for the offense for which the probationer was placed on probation, and←SJC the court may:

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

(2) revoke the probation and either:

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

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

(3) if imposition of 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.

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

G. After the 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

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time served on probation.

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

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

J. 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."

**SECTION 9.** Section 31-21-17.1 NMSA 1978 (being Laws 1994, Chapter 21, Section 2) is amended to read:

"31-21-17.1. [~~ADMINISTRATION BY~~] MEDICAL OR GERIATRIC PAROLE--PROCEDURES--DUTIES OF THE DEPARTMENT--DUTIES OF THE BOARD.--

A. The corrections department shall promulgate rules and shall implement a "medical and geriatric parole program", including the form of an application for medical or geriatric parole.

B. The director shall identify geriatric, permanently incapacitated and terminally ill inmates and authorize the release of those inmates who are eligible for

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~~medical or geriatric [or medical] parole [based on rules established by the board. The department shall forward an application and documentation in support of parole eligibility to the board within thirty days of receipt of an application from an inmate. The documentation shall include information concerning the inmate's age, medical history and prognosis, institutional behavior and adjustment and criminal history. The inmate or inmate's representative may submit an application to the board]~~ and notify those inmates of the opportunity to apply for medical or geriatric parole. Upon receiving an application, the director shall determine within sixty days whether to recommend an inmate for medical or geriatric parole. The recommendation shall include the inmate's age, medical history and prognosis, if applicable, institutional behavior and adjustment. When the director recommends an inmate for medical or geriatric parole, the director shall submit a statement to the board that the inmate's release is not incompatible with the welfare of society.

C. Inmates who have not served their minimum sentences may be considered eligible for parole under the medical and geriatric parole program. Medical and geriatric parole consideration shall be in addition to any other parole for which a geriatric, permanently incapacitated or terminally ill inmate may be eligible.

D. When considering an inmate for medical or

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geriatric parole, the director may request that reasonable medical and mental health examinations be conducted.

E. When determining an inmate's eligibility for geriatric or medical parole, the director shall consider the following criteria concerning the inmate:

- (1) age;
- (2) severity of illness, disease or infirmities;
- (3) comprehensive health evaluation;
- (4) institutional behavior;
- (5) level of risk for violence; and
- (6) alternatives to maintaining the geriatric, permanently incapacitated or terminally ill inmate in traditional settings.

F. The parole term of the geriatric, permanently incapacitated or terminally ill inmate on medical or geriatric parole shall be for the remainder of the inmate's sentence, without diminution of sentence for good behavior.

G. The board shall release an inmate on medical or geriatric parole upon recommendation from the director unless the parole board finds by clear and convincing evidence that the inmate's release is incompatible with the welfare of society and states in writing its reason for the finding. The board may not deny medical or geriatric parole solely because of the inmate's criminal history."

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SECTION 10. A new section of the Probation and Parole Act is enacted to read:

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

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

- (1) request a warrant;
- (2) initiate a hearing; and
- (3) seek departmental approval to use

custodial interventions.

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

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

(2) offer information and training on the system to judges, prosecution and defense attorneys, law enforcement personnel, detention center personnel, contracted

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service providers and other interested personnel;

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

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

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

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

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

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

E. The incentives and sanctions system shall apply

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to persons whose probation or parole commences subsequent to the effective date of this 2019 act and to all persons on probation or parole on the effective date of this 2019 act."

SECTION 11. A new section of the Probation and Parole Act is enacted to read:

"[NEW MATERIAL] TECHNICAL VIOLATIONS.--

A. If a probation or parole officer seeks to impose detention for a technical violation, the officer shall review the violation and proposed detention with a supervisor.

B. With supervisory approval, the probation or parole officer shall review the violation and proposed detention with the probationer or parolee and seek a signed waiver from the probationer or parolee that acknowledges the violation and accepts the proposed detention.

C. If the waiver is rejected, the probation or parole officer shall promptly report the alleged violation to the court, board or hearing officer, as appropriate, and proceed to formal resolution.

D. The officer's written report of a technical violation shall include the officer's recommendation and justification as to final action or resolution of the situation. The officer's recommendation is not binding on the court."

SECTION 12. REPEAL.--Section 31-21-25.1 NMSA 1978 (being Laws 1994, Chapter 21, Section 3) is repealed.

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SJC→~~HJC~~→~~SECTION 13. APPLICABILITY.--The provisions of Section 5 of this act apply to a person serving a term of incarceration on July 1, 2019 and to a person whose term of incarceration commences on or after July 1, 2019.~~

~~SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2019.~~←HJC←SJC

SJC→SECTION 13. APPLICABILITY.--The provisions of Section 5 of this act apply to a person serving a term of incarceration on January 1, 2020 and to a person whose term of incarceration commences on or after January 1, 2020.

SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is January 1, 2020.←SJC

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