

HOUSE BILL 342

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

INTRODUCED BY

Antonio Maestas and Gail Chasey and Sander Rue and
Richard C. Martinez

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING FOR ASSISTANCE
TO OFFENDERS WITH BEHAVIORAL HEALTH DIAGNOSES; REVISING
PROCEDURES RELATED TO A PERSON INCARCERATED IN A COUNTY JAIL;
REVISING PROTECTIONS FOR PERSONS INVOLVED WITH AN ALCOHOL- OR
DRUG-RELATED OVERDOSE; PROVIDING PROCEDURES FOR POST-CONVICTION
PETITIONS; REVISING REQUIREMENTS FOR PREPROSECUTION DIVERSION
PROGRAMS; REVISING PROCEDURES RELATED TO PROBATION AND PAROLE;
REVISING REQUIREMENTS FOR PRESENTENCE REPORTS; REVISING
REQUIREMENTS FOR CRIME VICTIMS' REPARATIONS; ENACTING THE
ACCURATE EYEWITNESS IDENTIFICATION ACT; REVISING DUTIES OF THE
NEW MEXICO SENTENCING COMMISSION; REQUIRING EYEWITNESS
IDENTIFICATION POLICIES AND TRAINING; 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:

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1 SECTION 1. Section 9-8-7.1 NMSA 1978 (being Laws 2007,
2 Chapter 325, Section 4) is amended to read:

3 "9-8-7.1. BEHAVIORAL HEALTH SERVICES DIVISION--POWERS AND
4 DUTIES OF THE HUMAN SERVICES DEPARTMENT.--Subject to
5 appropriation, the department shall:

6 A. contract for behavioral health treatment and
7 support services, including mental health, alcoholism and other
8 substance abuse services;

9 B. establish standards for the delivery of
10 behavioral health services, including quality management and
11 improvement, performance measures, accessibility and
12 availability of services, utilization management, credentialing
13 and recredentialing, rights and responsibilities of providers,
14 preventive behavioral health services, clinical treatment and
15 evaluation and the documentation and confidentiality of client
16 records;

17 C. ensure that all behavioral health services,
18 including mental health and substance abuse services, that are
19 provided, contracted for or approved are in compliance with the
20 requirements of Section 9-7-6.4 NMSA 1978;

21 D. assume responsibility for and implement adult
22 mental health and substance abuse services in the state in
23 coordination with the children, youth and families department;

24 E. create, implement and continually evaluate the
25 effectiveness of a framework for targeted, individualized

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1 interventions for adult and juvenile offenders with behavioral
2 health diagnoses who are incarcerated in a state, county or
3 municipal correctional facility, which framework shall address
4 those persons' behavioral health needs while they are
5 incarcerated and connect them to resources and services
6 immediately upon release that reduce the likelihood of
7 recidivism, detention and incarceration, such as supportive
8 housing, public assistance, medical assistance, behavioral
9 health treatment and employment training;

10 [~~E-~~] F. establish criteria for determining
11 individual eligibility for behavioral health services; and

12 [~~F-~~] G. maintain a management information system in
13 accordance with standards for reporting clinical and fiscal
14 information."

15 SECTION 2. A new section of the Human Services Department
16 Act is enacted to read:

17 "[NEW MATERIAL] INCARCERATED INDIVIDUALS--BEHAVIORAL
18 HEALTH SERVICES--COUNTY FUNDING PROGRAM.--To carry out the
19 provisions of Subsection E of Section 9-8-7.1 NMSA 1978 and to
20 provide behavioral health services to individuals who are
21 incarcerated in a county correctional facility:

22 A. the secretary shall adopt and promulgate rules:

23 (1) pursuant to which a county may apply for
24 and be awarded funding through the department; and

25 (2) to establish priorities and guidelines for

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1 the award of funding to counties; and

2 B. the department shall distribute funds, as
3 funding permits, to the county health care assistance funds of
4 those counties:

5 (1) that apply for behavioral health services
6 funding in accordance with department rules; and

7 (2) that have proposed utilization of funding
8 pursuant to this section that meets the priorities and
9 guidelines for the awarding of behavioral health services
10 funding established in department rules."

11 SECTION 3. Section 30-31-27.1 NMSA 1978 (being Laws 2007,
12 Chapter 260, Section 1) is amended to read:

13 "30-31-27.1. OVERDOSE PREVENTION--LIMITED IMMUNITY.--

14 A. A person who, in good faith, seeks medical
15 assistance for someone experiencing [~~a~~] an alcohol- or drug-
16 related overdose shall not be arrested, charged [~~or~~],
17 prosecuted or otherwise penalized, nor shall the property of
18 the person be subject to civil forfeiture, for [~~possession of a~~
19 controlled substance pursuant to] violating any of the
20 following if the evidence for the alleged violation was
21 obtained as a result of the need for seeking medical
22 assistance:

23 (1) the provisions of Section 30-31-23 NMSA
24 1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [~~if the~~
25 evidence for the charge of possession of a controlled substance

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1 ~~was gained as a result of the seeking of medical assistance];~~

2 (2) a restraining order; or

3 (3) the conditions of probation or parole.

4 B. A person who experiences [a] an alcohol- or
5 drug-related overdose and is in need of medical assistance
6 shall not be arrested, charged [or], prosecuted or otherwise
7 penalized, nor shall the property of the person be subject to
8 civil forfeiture, for [possession of a controlled substance
9 pursuant to] violating any of the following if the evidence for
10 the alleged violation was obtained as a result of the overdose
11 and the need for seeking medical assistance:

12 (1) the provisions of Section 30-31-23 NMSA
13 1978 or Subsection A of Section 30-31-25.1 NMSA 1978 [if the
14 evidence for the charge of possession of a controlled substance
15 was gained as a result of the overdose and the need for medical
16 assistance];

17 (2) a restraining order; or

18 (3) the conditions of probation or parole.

19 C. The act of seeking medical assistance for
20 someone who is experiencing [a] an alcohol- or drug-related
21 overdose may be used as a mitigating factor in a criminal
22 prosecution pursuant to the Controlled Substances Act for which
23 immunity is not provided pursuant to this section.

24 D. For the purposes of this section, "seeking
25 medical assistance" means:

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1 (1) reporting an alcohol- or drug-related
2 overdose or other medical emergency to law enforcement, the 911
3 system or another emergency dispatch system, a poison control
4 center or a health care provider; or

5 (2) assisting an individual who is reporting
6 an alcohol- or drug-related overdose or providing care to an
7 individual who is experiencing an alcohol- or drug-related
8 overdose or other medical emergency while awaiting the arrival
9 of a health care provider."

10 SECTION 4. Section 31-1A-2 NMSA 1978 (being Laws 2003,
11 Chapter 27, Section 1) is amended to read:

12 "31-1A-2. PROCEDURES FOR POST-CONVICTION CONSIDERATION OF
13 DNA EVIDENCE--REQUIREMENTS.--

14 A. A person convicted of a felony, who claims that
15 DNA evidence will establish [~~his~~] the person's innocence, may
16 petition the district court of the judicial district in which
17 [~~he~~] the person was convicted to order the disclosure,
18 preservation, production and testing of evidence that can be
19 subjected to DNA testing. A copy of the petition shall be
20 served on the district attorney for the judicial district in
21 which the district court is located. A petitioner shall be
22 granted full, fair and prompt proceedings upon filing a
23 petition.

24 B. As a condition to the district court's
25 acceptance of [~~his~~] the person's petition, the petitioner

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1 shall:

2 (1) submit to DNA testing ordered by the
3 district court; and

4 (2) authorize the district attorney's use of
5 the DNA test results to investigate all aspects of the case
6 that the petitioner is seeking to reopen.

7 C. DNA samples obtained pursuant to Subsection B of
8 this section shall be submitted for DNA testing according to
9 the procedures in the DNA Identification Act, and the DNA
10 record shall be entered into the federal bureau of
11 investigation's national DNA index system for storage and
12 exchange of DNA records submitted by forensic DNA laboratories.

13 [~~G.~~] D. The petitioner shall show, by a
14 preponderance of the evidence, that:

15 (1) [~~he~~] the petitioner was convicted of a
16 felony;

17 (2) evidence exists that can be subjected to
18 DNA testing;

19 (3) the evidence to be subjected to DNA
20 testing:

21 (a) has not previously been subjected to
22 DNA testing;

23 (b) has not previously been subjected to
24 the type of DNA testing that is now being requested; or

25 (c) was previously subjected to DNA

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1 testing, but was tested incorrectly or interpreted incorrectly;

2 (4) the DNA testing [~~he~~] the petitioner is
3 requesting will be likely to produce admissible evidence; and

4 (5) identity was an issue in [~~his~~] the
5 petitioner's case or that if the DNA testing [~~he~~] the
6 petitioner is requesting had been performed prior to [~~his~~] the
7 petitioner's conviction and the results had been exculpatory,
8 there is a reasonable probability that the petitioner would not
9 have pled guilty or been found guilty.

10 [~~D-~~] E. If the petitioner satisfies the
11 requirements set forth in Subsection [~~E~~] D of this section, the
12 district court shall appoint counsel for the petitioner, unless
13 the petitioner waives counsel or retains [~~his~~] the petitioner's
14 own counsel.

15 [~~E-~~] F. After reviewing a petition, the district
16 court may dismiss the petition, order a response by the
17 district attorney or issue an order for DNA testing.

18 [~~F-~~] G. The district court shall order all evidence
19 secured that is related to the petitioner's case and that could
20 be subjected to DNA testing. The evidence shall be preserved
21 during the pendency of the proceeding. The district court may
22 impose appropriate sanctions, including dismissal of the
23 petitioner's conviction or criminal contempt, if the court
24 determines that evidence was intentionally destroyed after
25 issuance of the court's order to secure evidence.

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1 ~~[G.]~~ H. The district court shall order DNA testing
2 if the petitioner satisfies the requirements set forth in
3 Subsections B and ~~[G.]~~ D of this section.

4 ~~[H.]~~ I. If the results of the DNA testing are
5 exculpatory, the district court may set aside the petitioner's
6 judgment and sentence, may dismiss the charges against the
7 petitioner with prejudice, may grant the petitioner a new trial
8 or may order other appropriate relief.

9 ~~[I.]~~ J. The cost of DNA testing ordered pursuant to
10 this section shall be borne by the state or the petitioner, as
11 the district court may order in the interest of justice.
12 Provided, that a petitioner shall not be denied DNA testing
13 because of ~~[his]~~ the petitioner's inability to pay for the cost
14 of DNA testing. Testing under this provision shall only be
15 performed by a laboratory that meets the minimum standards of
16 the national DNA index system.

17 ~~[J.]~~ K. The provisions of this section shall not be
18 interpreted to limit:

19 (1) other circumstances under which a person
20 may obtain DNA testing; or

21 (2) post-conviction relief a petitioner may
22 seek pursuant to other provisions of law.

23 ~~[K.]~~ L. The petitioner shall have the right to
24 appeal a district court's denial of the requested DNA testing,
25 a district court's final order on a petition or a district

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1 court's decision regarding relief for the petitioner. The
2 state shall have the right to appeal any final order issued by
3 the district court. An appeal shall be filed by a party within
4 thirty days to the court of appeals.

5 ~~[H.]~~ M. The state shall preserve all evidence that
6 is secured in relation to an investigation or prosecution of a
7 crime and that could be subjected to DNA testing, for not less
8 than the period of time that a person remains subject to
9 incarceration or ~~[supervision]~~ on probation or parole in
10 connection with the investigation or prosecution.

11 ~~[M.]~~ N. The state may dispose of evidence before
12 the expiration of the time period set forth in Subsection ~~[K]~~ M
13 of this section if:

14 (1) no other law, regulation or court order
15 requires that the evidence be preserved;

16 (2) the evidence must be returned to its
17 rightful owner;

18 (3) preservation of the evidence is
19 impractical due to the size, bulk or physical characteristics
20 of the evidence; and

21 (4) the state takes reasonable measures to
22 remove and preserve portions of the evidence sufficient to
23 permit future DNA testing.

24 O. In proceedings under this section, the Rules of
25 Evidence and the Rules of Civil Procedure for the District

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1 Courts shall apply.

2 [N.] P. As used in this section, "DNA" means
3 deoxyribonucleic acid."

4 SECTION 5. Section 31-16A-4 NMSA 1978 (being Laws 1981,
5 Chapter 33, Section 4) is amended to read:

6 "31-16A-4. ELIGIBILITY.--

7 A. A defendant [~~must~~] shall meet the following
8 minimum criteria to be eligible for a preprosecution diversion
9 program:

10 (1) the defendant [~~must~~] shall have no prior
11 felony convictions for a violent crime; [~~and no prior felony~~
12 ~~convictions for any crime for the previous ten years;~~

13 ~~(2) the crime alleged to have been committed~~
14 ~~by the defendant is nonviolent in nature with the exception of~~
15 ~~domestic disputes not involving a minor;~~

16 ~~(3) if the defendant was on probation~~
17 ~~previously, his probation must not have been revoked or~~
18 ~~unsatisfactorily discharged;~~

19 ~~(4) the defendant has not been admitted into a~~
20 ~~similar program for the previous ten years;~~

21 ~~(5)]~~ (2) the defendant is willing to
22 participate in the program and submit to all program
23 requirements;

24 ~~[(6) the crime alleged to have been committed~~
25 ~~by the defendant does not involve substantial sale or~~

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1 ~~possession of controlled substances; and~~

2 ~~(7) a person meeting all of the above criteria~~
3 ~~and any additional criteria established by the district~~
4 ~~attorney may be entered into the preprosecution diversion~~
5 ~~program. The district attorney may elect to not divert a~~
6 ~~person to the preprosecution diversion program even though that~~
7 ~~person meets the minimum criteria herein set forth. A decision~~
8 ~~by the district attorney to not divert to the preprosecution~~
9 ~~diversion program is not subject to appeal and may not be~~
10 ~~raised as a defense to any prosecution or habitual offender~~
11 ~~proceeding] and~~

12 (3) any additional criteria set by the
13 district attorney.

14 B. A ~~[district attorney may set additional~~
15 ~~criteria]~~ person who meets all of the criteria pursuant to
16 Subsection A of this section may be entered into the
17 preprosecution diversion program; provided that the district
18 attorney may elect not to divert a person to the preprosecution
19 diversion program even though that person meets the minimum
20 criteria set forth in this section.

21 C. A decision by the district attorney not to
22 divert a person to the preprosecution diversion program is not
23 subject to appeal and shall not be raised as a defense to any
24 prosecution or habitual offender proceeding."

25 SECTION 6. Section 31-16A-7 NMSA 1978 (being Laws 1981,

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1 Chapter 33, Section 7, as amended) is amended to read:

2 "31-16A-7. PROGRAM PARTICIPATION--~~[COSTS]~~ REASONABLE
3 CONDITIONS--TERMINATION.--

4 A. A defendant may be diverted to a preprosecution
5 diversion program for no less than six months and no longer
6 than two years. A district attorney may extend the diversion
7 period for a defendant as a disciplinary measure or to allow
8 adequate time for restitution; provided that the extension
9 coupled with the original period does not exceed two years.

10 B. A district attorney may require as a program
11 requirement that a defendant agree to such reasonable
12 conditions as the district attorney deems necessary to ensure
13 that the defendant will observe the laws of the United States
14 and the various states and the ordinances of any municipality.
15 ~~[and shall require the defendant to pay to his office the costs~~
16 ~~related to his participation in the program not exceeding one~~
17 ~~thousand twenty dollars (\$1,020) annually to be paid in monthly~~
18 ~~installments of not less than fifteen dollars (\$15.00) and not~~
19 ~~more than eighty-five dollars (\$85.00), subject to modification~~
20 ~~by the district attorney on the basis of changed financial~~
21 ~~circumstances. All costs collected by a district attorney~~
22 ~~pursuant to this subsection shall be transmitted to the~~
23 ~~administrative office of the district attorneys for credit to~~
24 ~~the district attorney fund.~~

25 B.] C. If a defendant does not comply with the

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1 terms, conditions and requirements of a preprosecution
2 diversion program, [~~his~~] the defendant's participation in the
3 program [~~shall~~] may be terminated, and the district attorney
4 may proceed with the suspended criminal prosecution of the
5 defendant.

6 [~~G-~~] D. If the participation of a defendant in a
7 preprosecution diversion program is terminated, the district
8 attorney shall state in writing the specific reasons for the
9 termination, which reasons shall be available for review by the
10 defendant and [~~his~~] the defendant's counsel."

11 SECTION 7. Section 31-18-15 NMSA 1978 (being Laws 1977,
12 Chapter 216, Section 4, as amended) is amended to read:

13 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
14 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
15 DEDUCTIONS.--

16 A. If a person is convicted of a noncapital felony,
17 the basic sentence of imprisonment is as follows:

- 18 (1) for a first degree felony resulting in the
19 death of a child, life imprisonment;
- 20 (2) for a first degree felony for aggravated
21 criminal sexual penetration, life imprisonment;
- 22 (3) for a first degree felony, eighteen years
23 imprisonment;
- 24 (4) for a second degree felony resulting in
25 the death of a human being, fifteen years imprisonment;

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1 (5) for a second degree felony for a sexual
2 offense against a child, fifteen years imprisonment;

3 (6) for a second degree felony for sexual
4 exploitation of children, twelve years imprisonment;

5 (7) for a second degree felony, nine years
6 imprisonment;

7 (8) for a third degree felony resulting in the
8 death of a human being, six years imprisonment;

9 (9) for a third degree felony for a sexual
10 offense against a child, six years imprisonment;

11 (10) for a third degree felony for sexual
12 exploitation of children, eleven years imprisonment;

13 (11) for a third degree felony, three years
14 imprisonment;

15 (12) for a fourth degree felony for sexual
16 exploitation of children, ten years imprisonment; or

17 (13) for a fourth degree felony, eighteen
18 months imprisonment.

19 B. The appropriate basic sentence of imprisonment
20 shall be imposed upon a person convicted and sentenced pursuant
21 to Subsection A of this section, unless the court alters the
22 sentence pursuant to the provisions of the Criminal Sentencing
23 Act.

24 C. A period of parole shall be imposed only for
25 felony convictions wherein a person is sentenced to

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1 imprisonment of more than one year, unless the parties to a
2 proceeding agree that a period of parole should be imposed. If
3 a period of parole is imposed, the court shall include in the
4 judgment and sentence of each person convicted and sentenced to
5 imprisonment in a corrections facility designated by the
6 corrections department authority for a period of parole to be
7 served in accordance with the provisions of Section 31-21-10
8 NMSA 1978 after the completion of any actual time of
9 imprisonment and authority to require, as a condition of
10 parole, the payment of the costs of parole services and
11 reimbursement to a law enforcement agency or local crime
12 stopper program in accordance with the provisions of that
13 section. If imposed, the period of parole shall be deemed to
14 be part of the sentence of the convicted person in addition to
15 the basic sentence imposed pursuant to Subsection A of this
16 section together with alterations, if any, pursuant to the
17 provisions of the Criminal Sentencing Act.

18 D. When a court imposes a sentence of imprisonment
19 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
20 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
21 imprisonment provided pursuant to the provisions of Subsection
22 A of this section, the period of parole shall be served in
23 accordance with the provisions of Section 31-21-10 NMSA 1978
24 for the degree of felony for the basic sentence for which the
25 inmate was convicted. For the purpose of designating a period

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1 of parole, a court shall not consider that the basic sentence
2 of imprisonment was suspended or deferred and that the inmate
3 served a period of imprisonment pursuant to the provisions of
4 the Criminal Sentencing Act.

5 E. The court may, in addition to the imposition of
6 a basic sentence of imprisonment, impose a fine not to exceed:

7 (1) for a first degree felony resulting in the
8 death of a child, seventeen thousand five hundred dollars
9 (\$17,500);

10 (2) for a first degree felony for aggravated
11 criminal sexual penetration, seventeen thousand five hundred
12 dollars (\$17,500);

13 (3) for a first degree felony, fifteen
14 thousand dollars (\$15,000);

15 (4) for a second degree felony resulting in
16 the death of a human being, twelve thousand five hundred
17 dollars (\$12,500);

18 (5) for a second degree felony for a sexual
19 offense against a child, twelve thousand five hundred dollars
20 (\$12,500);

21 (6) for a second degree felony for sexual
22 exploitation of children, five thousand dollars (\$5,000);

23 (7) for a second degree felony, ten thousand
24 dollars (\$10,000);

25 (8) for a third degree felony resulting in the

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1 death of a human being, five thousand dollars (\$5,000);

2 (9) for a third degree felony for a sexual
3 offense against a child, five thousand dollars (\$5,000);

4 (10) for a third degree felony for sexual
5 exploitation of children, five thousand dollars (\$5,000);

6 (11) for a third or fourth degree felony, five
7 thousand dollars (\$5,000); or

8 (12) for a fourth degree felony for sexual
9 exploitation of children, five thousand dollars (\$5,000).

10 F. When the court imposes a sentence of
11 imprisonment for a felony offense, the court shall indicate
12 whether or not the offense is a serious violent offense, as
13 defined in Section 33-2-34 NMSA 1978. The court shall inform
14 an offender that the offender's sentence of imprisonment is
15 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
16 and 33-2-38 NMSA 1978. If the court fails to inform an
17 offender that the offender's sentence is subject to those
18 provisions or if the court provides the offender with erroneous
19 information regarding those provisions, the failure to inform
20 or the error shall not provide a basis for a writ of habeas
21 corpus.

22 G. No later than October 31 of each year, the
23 New Mexico sentencing commission shall provide a written report
24 to the secretary of corrections, all New Mexico criminal court
25 judges, the administrative office of the district attorneys and

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1 the chief public defender. The report shall specify the
2 average reduction in the sentence of imprisonment for serious
3 violent offenses and nonviolent offenses, as defined in Section
4 33-2-34 NMSA 1978, due to meritorious deductions earned by
5 prisoners during the previous fiscal year pursuant to the
6 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
7 NMSA 1978. The corrections department shall allow the
8 commission access to documents used by the department to
9 determine earned meritorious deductions for prisoners."

10 SECTION 8. Section 31-20-5 NMSA 1978 (being Laws 1963,
11 Chapter 303, Section 29-17, as amended) is amended to read:

12 "31-20-5. PLACING DEFENDANT ON PROBATION.--

13 A. The purpose of probation is to hold people
14 accountable for their criminal conduct, promote their
15 reintegration into law-abiding society and reduce the risks
16 that they will commit new offenses. When a person has been
17 convicted of a crime for which a sentence of imprisonment is
18 authorized and when the [~~magistrate, metropolitan or district~~]
19 court has deferred or suspended sentence, it shall order the
20 defendant to be placed on probation for all or some portion of
21 the period of deferment or suspension [~~if the defendant is in~~
22 ~~need of supervision, guidance or direction that is feasible for~~
23 ~~the corrections department to furnish].~~

24 B. Except for sex offenders as provided in Section
25 31-20-5.2 NMSA 1978, the total period of probation for district

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1 court shall not exceed five years and the total period of
2 probation for the magistrate or metropolitan courts shall be no
3 longer than the maximum allowable incarceration time for the
4 offense or as otherwise provided by law.

5 C. The corrections department shall complete a
6 validated risk and needs assessment and provide it to the court
7 for consultation when the court decides what conditions of
8 probation to impose.

9 ~~[B-]~~ D. If a defendant is required to serve a
10 period of probation subsequent to a period of incarceration:

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

16 (2) ~~[in the event that]~~ if the defendant
17 violates any condition of that parole and the violation is not
18 sanctioned pursuant to the provisions of Section 16 of this
19 2019 act, the parole board shall cause ~~[him]~~ the defendant to
20 be brought before it pursuant to the provisions of Section
21 31-21-14 NMSA 1978 and may make any disposition authorized
22 pursuant to that section and, if parole is revoked, the period
23 of parole served in the custody of a correctional facility
24 shall not be credited as time served on probation."

25 **SECTION 9.** Section 31-21-4 NMSA 1978 (being Laws 1955,
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1 Chapter 232, Section 2, as amended) is amended to read:

2 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

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

14 B. The corrections department shall:

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

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

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

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

4 SECTION 10. Section 31-21-5 NMSA 1978 (being Laws 1978,
5 Chapter 41, Section 1, as amended) is amended to read:

6 "31-21-5. DEFINITIONS.--As used in the Probation and
7 Parole Act:

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

12 ~~B. "Parole" means the release to the community of~~
13 ~~an inmate of an institution by decision of the board or by~~
14 ~~operation of law, subject to conditions imposed by the board~~
15 ~~and to its supervision;~~

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

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

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

22 A. "absconding" means that a person under
23 supervision deliberately makes the person's whereabouts unknown
24 to the person's probation or parole officer or fails to report
25 for the purposes of avoiding supervision, and reasonable

1 efforts by the probation and parole officer to locate the
2 person have been unsuccessful;

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

5 C. "board" means the parole board;

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

9 E. "geriatric inmate" means a person who:

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

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

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

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

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

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

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

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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 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

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1 person's own self or to society."

2 SECTION 11. Section 31-21-9 NMSA 1978 (being Laws 1972,
3 Chapter 71, Section 17) is amended to read:

4 "31-21-9. PRESENTENCE [~~AND PRERELEASE~~] INVESTIGATIONS.--

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

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

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

24 SECTION 12. Section 31-21-10 NMSA 1978 (being Laws 1980,
25 Chapter 28, Section 1, as amended) is amended to read:

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1 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

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

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

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

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

15 [~~(b) mitigating and aggravating~~
16 ~~circumstances;~~

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

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

21 [~~(e) the reports filed under Section~~
22 ~~31-21-9 NMSA 1978; and~~

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

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

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

6 B. The board shall not deny parole to an inmate who
7 was sentenced to life imprisonment based solely on the offense
8 for which the inmate was convicted.

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

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

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

25 [~~D.~~] F. Except for certain sex offenders as

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1 provided in Section 31-21-10.1 NMSA 1978, an inmate who was
2 convicted of a first, second or third degree felony and who has
3 served the sentence of imprisonment imposed by the court in an
4 institution designated by the corrections department that
5 exceeds one year or has agreed and been ordered to serve a
6 period of parole by the court shall be required to undergo a
7 two-year period of parole. An inmate who was convicted of a
8 fourth degree felony and who has served ~~[the]~~ a sentence of
9 imprisonment imposed by the court in an institution designated
10 by the corrections department that exceeds one year or has
11 agreed and been ordered to serve a period of parole by the
12 court shall be required to undergo a one-year period of parole.
13 During the period of parole, the person shall be under the
14 guidance and supervision of the board.

15 ~~[E-]~~ G. Every person while on parole shall remain
16 in the legal custody of the institution from which the person
17 was released, but shall be subject to the orders of the board.
18 The board shall furnish to each inmate as a prerequisite to
19 release under its supervision a written statement of the
20 conditions of parole that shall be accepted and agreed to by
21 the inmate as evidenced by the inmate's signature affixed to a
22 duplicate copy to be retained in the files of the board. The
23 board shall also require as a prerequisite to release the
24 submission and approval of a parole plan. If an inmate refuses
25 to affix the inmate's signature to the written statement of the

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

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

24 [~~G-~~] I. Pursuant to the provisions of Section
25 31-18-15 NMSA 1978, the board shall require the inmate as a

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1 condition of parole:

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

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

25 ~~[H.]~~ J. The provisions of this section shall apply

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1 to all inmates except geriatric, permanently incapacitated and
2 terminally ill inmates eligible for the medical and geriatric
3 parole program [~~as provided by the Parole Board Act~~]."

4 SECTION 13. Section 31-21-13.1 NMSA 1978 (being Laws
5 1988, Chapter 62, Section 3, as amended) is amended to read:

6 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

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

18 B. The corrections department shall implement and
19 operate intensive supervision programs in various local
20 communities. The programs shall provide services for
21 appropriate individuals by probation and parole officers of the
22 corrections department. The corrections department shall
23 promulgate rules [~~and regulations~~] to provide that the officers
24 providing these services have [~~a maximum case load of forty~~
25 ~~offenders~~] the training, resources and caseloads that enable

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1 them to operate effectively and to provide for offender
2 selection and other criteria. The corrections department may
3 cooperate with all recognized law enforcement authorities and
4 share all necessary and pertinent information, records or
5 documents regarding probationers or parolees in order to
6 implement and operate these intensive supervision programs.

7 C. For purposes of this section, a judge
8 contemplating imposition of an intensive supervision program
9 for an individual shall consult with the adult probation and
10 parole division of the corrections department and [~~consider the~~
11 ~~recommendations before imposing such probation~~] review the
12 results of the validated risk and needs assessment. The adult
13 probation and parole division of the corrections department
14 shall recommend only those individuals who score as high risk
15 and who would have otherwise been recommended for incarceration
16 [~~for~~] to participate in intensive supervision programs. [A
17 ~~judge has discretion to impose an intensive supervision program~~
18 ~~for an individual, regardless of recommendations made by the~~
19 ~~adult probation and parole division.~~] Inmates who are assessed
20 as high risk on a validated risk and needs assessment and who
21 are eligible for parole or are within twelve months of
22 eligibility for parole, or inmates who would otherwise remain
23 in a correctional institution for lack of a parole plan or
24 those parolees whose parole the board would otherwise revoke
25 are eligible for intensive supervision programs. The

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1 provisions of this section do not limit or reduce the statutory
2 authority vested in probation and parole supervision as defined
3 by any other section of the Probation and Parole Act.

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

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

18 "31-21-14. ~~[RETURN OF]~~ NON-TECHNICAL PAROLE ~~[VIOLATOR]~~
19 VIOLATIONS.--

20 A. At any time during release on parole:
21 (1) the board or the director may issue a
22 warrant for the arrest of the ~~[released prisoner for]~~ parolee
23 to answer a charge of a non-technical violation. ~~[of any of~~
24 ~~the conditions of release or issue a notice to appear to answer~~
25 ~~a charge of violation. The notice shall be served personally~~

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1 ~~upon the prisoner~~] The warrant shall authorize the
2 [~~superintendent~~] warden of the institution from which the
3 [~~prisoner~~] parolee was released to return the [~~prisoner~~]
4 parolee to the [~~actual~~] physical custody of the institution or
5 to any other [~~suitable~~] detention facility designated by the
6 board or the director. If the [~~prisoner~~] parolee is out of the
7 state, the warrant shall authorize the [~~superintendent~~] warden
8 to return [~~him~~] the parolee to the state; or

9 [B.] (2) the director may arrest the
10 [~~prisoner~~] parolee without a warrant or may deputize [~~any~~] an
11 officer with power of arrest to do so by giving [~~him~~] the
12 officer a written statement [~~setting forth~~] that the [~~prisoner~~]
13 parolee has, in the judgment of the director, [~~violated the~~
14 ~~conditions of his release~~] committed a non-technical violation.
15 Where an arrest is made without a warrant, the [~~prisoner~~]
16 parolee shall not be returned to the institution unless
17 authorized by the director or the board.

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

21 C. Upon arrest and detention for a non-technical
22 violation, the board shall cause the [~~prisoner~~] parolee to be
23 promptly brought before it for a parole revocation hearing on
24 the [~~parole~~] non-technical violation charged, under rules [~~and~~
25 ~~regulations~~] the board may adopt.

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

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

9 F. If it appears that ~~[he]~~ the parolee has
10 ~~[violated the provisions of his release]~~ committed a non-
11 technical violation, the board shall determine whether the time
12 from the date of the violation to the date of ~~[his]~~ the
13 parolee's arrest, or any part of it, shall be counted as time
14 served under the sentence.

15 G. At any time during release on parole, the board
16 or the director may issue a notice to appear to answer a charge
17 of a technical violation. The notice shall be served
18 personally upon the parolee and shall initiate a technical
19 violation hearing in accordance with Section 17 of this 2019
20 act."

21 SECTION 15. Section 31-21-17.1 NMSA 1978 (being Laws
22 1994, Chapter 21, Section 2) is amended to read:

23 "31-21-17.1. ~~[ADMINISTRATION BY]~~ MEDICAL OR GERIATRIC
24 PAROLE--PROCEDURES--DUTIES OF THE DEPARTMENT--DUTIES OF THE
25 BOARD.--

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1 A. The corrections department shall promulgate
2 rules and shall implement a "medical and geriatric parole
3 program".

4 B. The director shall identify geriatric,
5 permanently incapacitated and terminally ill inmates and
6 authorize the release of those inmates who are eligible for
7 medical or geriatric [or medical] parole [based on rules
8 established by the board. The department shall forward an
9 application and documentation in support of parole eligibility
10 to the board within thirty days of receipt of an application
11 from an inmate. The documentation shall include information
12 concerning the inmate's age, medical history and prognosis,
13 institutional behavior and adjustment and criminal history.
14 The inmate or inmate's representative may submit an application
15 to the board], whose release is not incompatible with the
16 welfare of society and who were not convicted of first degree
17 murder.

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

24 D. When considering an inmate for medical or
25 geriatric parole, the director may request that reasonable

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1 medical examinations be conducted.

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

5 (1) age;

6 (2) severity of illness, disease or
7 infirmities;

8 (3) comprehensive health evaluation;

9 (4) institutional behavior;

10 (5) level of risk for violence;

11 (6) criminal history; and

12 (7) alternatives to maintaining the geriatric,
13 permanently incapacitated or terminally ill inmate in
14 traditional settings.

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

19 G. The board shall:

20 (1) release an inmate on medical or geriatric
21 parole upon receipt of authorization from the director to
22 release the inmate;

23 (2) determine the appropriate level of
24 supervision following an inmate's release on medical or
25 geriatric parole and develop a comprehensive discharge plan for

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1 those geriatric, permanently incapacitated and terminally ill
2 inmates; and

3 (3) at the time of an inmate's release on
4 medical or geriatric parole, prescribe terms and conditions of
5 the inmate's parole, including medical supervision and
6 intervals of periodic medical evaluations.

7 H. The director shall report annually to the
8 appropriate legislative interim committee the:

9 (1) number of inmates eligible for medical and
10 geriatric parole;

11 (2) nature of the illnesses, disease or
12 condition of the applicants;

13 (3) reason any application for medical or
14 geriatric parole was denied; and

15 (4) number of persons on medical or geriatric
16 parole who have been returned to the custody of the corrections
17 department and the reasons for their return."

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

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

22 A. The corrections department shall create,
23 maintain and fully implement an incentives and sanctions system
24 to guide responses to negative and positive behavior by
25 parolees under supervision by the department. The system shall

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1 provide for graduated responses to technical violations of
2 supervision conditions, in a swift, certain and proportional
3 manner, and include guidance and procedures to determine when
4 and how to:

- 5 (1) request a warrant;
- 6 (2) initiate a hearing; and
- 7 (3) seek departmental approval to use
8 custodial interventions.

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

- 12 (1) provide information and training on the
13 system for probation and parole officers, supervisors and
14 members and staff of the board;
- 15 (2) offer information and training on the
16 system to judges, prosecution and defense attorneys, law
17 enforcement personnel, detention center personnel, contracted
18 service providers and other interested personnel;
- 19 (3) review the system at least every five
20 years to ensure that it adheres to evidence-based practices and
21 that the use of sanctions and incentives by probation and
22 parole officers is consistent across the state;
- 23 (4) ensure that the guidance and procedures
24 established by the system consider community safety and the
25 needs of the victim and offender;

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

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

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

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

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

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

20 A. If a probation or parole officer seeks to impose
21 detention for a technical violation, the officer shall initiate
22 a technical violation hearing by providing written notice of
23 intent to impose detention on the parolee not less than ten
24 business days before the hearing. The notice shall be served
25 personally upon the parolee.

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1 B. A hearing officer designated by the corrections
2 department shall conduct the hearing in accordance with rules
3 promulgated by the department. A hearing officer shall be
4 assisted by a mental health professional or an addiction
5 services specialist and a security threat specialist.

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

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

15 SECTION 18. Section 31-22-7 NMSA 1978 (being Laws 1981,
16 Chapter 325, Section 7, as amended) is amended to read:

17 "31-22-7. ELIGIBILITY FOR REPARATION.--

18 A. [~~In the event any~~] If a person is injured or
19 killed by [~~any~~] an act or omission of [~~any other~~] another
20 person coming within the criminal jurisdiction of the state
21 after [~~the effective date of the Crime Victims Reparation Act~~]
22 July 1, 1981, which act or omission includes a crime enumerated
23 in Section 31-22-8 NMSA 1978, and upon application for
24 reparation, the commission may award reparation in accordance
25 with the Crime Victims Reparation Act:

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1 (1) to the victim;

2 (2) in the case of the victim's death, to or
3 for the benefit of any one or more of the deceased victim's
4 dependents; or

5 (3) to any individual who voluntarily assumes
6 funeral or medical expenses of the victim.

7 B. For the purpose of the Crime Victims Reparation
8 Act, a person shall be deemed to have intentionally committed
9 an act or omission constituting a crime, notwithstanding that
10 by reason of age, insanity, drunkenness or otherwise [~~he~~] the
11 person was legally incapable of forming a criminal intent.

12 C. In determining whether to make an order under
13 this section, the commission may consider any circumstances it
14 determines to be relevant. The commission shall consider the
15 behavior of the victim and whether, because of provocation or
16 otherwise, the victim bears responsibility for the act or
17 omission constituting a crime that caused [~~his~~] the victim's
18 injury or death and shall reduce the amount of reparation in
19 accordance with its assessment of the degree of responsibility
20 attributable to the victim.

21 D. An order may be made under this section whether
22 or not any person is prosecuted for or convicted of a crime
23 enumerated in Section 31-22-8 NMSA 1978; provided an arrest has
24 been made or the act or omission constituting [~~such~~] a crime
25 has been reported to the police in a reasonable time or the act

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1 or omission constituting a crime has been reported to a medical
2 or mental health care provider, victim counselor or other
3 counseling provider. No order may be made under this section
4 unless the commission finds that:

5 (1) the act or omission constituting a crime
6 did occur;

7 (2) the injury or death of the victim resulted
8 from the act or omission constituting a crime; and

9 (3) the claimant or victim fully cooperated
10 with the appropriate law enforcement agencies or the commission
11 finds that the claimant or victim acted reasonably under the
12 circumstances.

13 E. Upon application from the district attorney of
14 the appropriate district, the commission may suspend
15 proceedings under the Crime Victims Reparation Act for such
16 period as it deems desirable on the [~~ground~~] grounds that a
17 prosecution for the act or omission constituting a crime has
18 commenced or is imminent."

19 SECTION 19. A new section of Chapter 60, Article 7B NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] SUBSTANCE-RELATED POISONING PREVENTION--
22 LIMITED IMMUNITY.--

23 A. A person who, in good faith, seeks medical
24 assistance for someone experiencing an alcohol- or drug-related
25 overdose shall not be arrested, charged, prosecuted or

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1 otherwise penalized, nor shall the property of the person be
2 subject to civil forfeiture, for violating any of the following
3 if the evidence for the alleged violation was obtained as a
4 result of the need for seeking medical assistance:

5 (1) the provisions of Section 60-7B-1 or
6 60-7B-9 NMSA 1978;

7 (2) a restraining order; or

8 (3) the conditions of probation or parole.

9 B. A person who experiences an alcohol- or drug-
10 related overdose and is in need of medical assistance shall not
11 be arrested, charged, prosecuted or otherwise penalized, nor
12 shall the property of the person be subject to civil
13 forfeiture, for violating any of the following if the evidence
14 for the alleged violation was obtained as a result of the
15 overdose and the need for seeking medical assistance:

16 (1) the provisions of Section 60-7B-1 or
17 60-7B-9 NMSA 1978;

18 (2) a restraining order; or

19 (3) the conditions of probation or parole.

20 C. The act of seeking medical assistance for
21 someone who is experiencing an alcohol- or drug-related
22 overdose may be used as a mitigating factor in a criminal
23 prosecution pursuant to the Liquor Control Act for which
24 immunity is not provided pursuant to this section.

25 D. For the purposes of this section, "seeking

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1 medical assistance" means:

2 (1) reporting an alcohol- or drug-related
3 overdose or other medical emergency to law enforcement, the 911
4 system or another emergency dispatch system, a poison control
5 center or to a health care provider; or

6 (2) assisting an individual who is reporting
7 an alcohol- or drug-related overdose or providing care to an
8 individual who is experiencing an alcohol- or drug-related
9 overdose or other medical emergency while awaiting the arrival
10 of a health care provider."

11 SECTION 20. [NEW MATERIAL] SHORT TITLE.--Sections 20
12 through 23 of this act may be cited as the "Accurate Eyewitness
13 Identification Act".

14 SECTION 21. [NEW MATERIAL] DEFINITIONS.--As used in the
15 Accurate Eyewitness Identification Act:

16 A. "administrator" means a person conducting a
17 photo lineup or live lineup;

18 B. "blind" means the administrator does not know
19 the identity of the suspect;

20 C. "blinded" means the administrator may know who
21 the suspect is but does not know which lineup member is being
22 viewed by the eyewitness;

23 D. "eyewitness" means a person who observes another
24 person at or near the scene of an offense;

25 E. "filler" means either a person or a photograph

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1 of a person who is not suspected of an offense and is included
2 in an identification procedure;

3 F. "live lineup" means an identification procedure
4 in which a group of persons, including the suspected
5 perpetrator of an offense and other persons not suspected of
6 the offense, is displayed to an eyewitness for the purpose of
7 determining whether the eyewitness identifies the suspect as
8 the perpetrator;

9 G. "photo lineup" means an identification procedure
10 in which an array of photographs, including a photograph of the
11 suspected perpetrator of an offense and additional photographs
12 of other persons not suspected of the offense, is displayed to
13 an eyewitness either in hard copy form or via computer for the
14 purpose of determining whether the eyewitness identifies the
15 suspect as the perpetrator;

16 H. "showup" means an identification procedure in
17 which an eyewitness is presented with a single suspect for the
18 purpose of determining whether the eyewitness identifies this
19 individual as the perpetrator; and

20 I. "suspect" means a person believed by law
21 enforcement to be the possible perpetrator of the crime.

22 SECTION 22. [NEW MATERIAL] EYEWITNESS IDENTIFICATION
23 PROCEDURES.--

24 A. Not later than January 1, 2020, a criminal
25 justice entity conducting eyewitness identification procedures

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1 shall adopt and comply with written policies for using an
2 eyewitness to make a decision about whether a suspect is the
3 perpetrator of a crime upon viewing the suspect in person in a
4 live lineup or showup or upon viewing a representation of the
5 suspect in a photo lineup.

6 B. Each governmental entity in New Mexico that
7 administers eyewitness identification procedures shall provide
8 a copy of its written policies to the secretary of public
9 safety no later than February 1, 2020 and the secretary shall
10 make those policies available to the public.

11 C. A law enforcement agency shall biennially review
12 policies adopted pursuant to this section to incorporate new
13 scientifically supported protocols.

14 D. In developing and revising policies pursuant to
15 this section, a law enforcement agency shall adopt those
16 practices shown by reliable evidence to enhance the accuracy of
17 identification procedures. Each governmental entity in New
18 Mexico that administers eyewitness identification procedures
19 shall submit its updated written policies to the secretary of
20 public safety no later than February 1 of each odd-numbered
21 year.

22 E. A law enforcement agency shall include in
23 policies adopted pursuant to this section practices to enhance
24 the objectivity and reliability of eyewitness identifications
25 and to minimize the possibility of mistaken identifications,

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1 including the following:

2 (1) having a blind administrator or blinded
3 administrator perform the live lineup or photo lineup;

4 (2) documenting a description of the suspect
5 provided by the eyewitness, including a description of the
6 circumstances under which the suspect was seen by the
7 eyewitness, the time of day, the length of time the suspect was
8 seen, the perceived or actual distance from the eyewitness to
9 the suspect and the lighting conditions;

10 (3) providing the eyewitness with instructions
11 that minimize the likelihood of an inaccurate identification,
12 including that the perpetrator may or may not be in the
13 identification procedure and that the investigation will
14 continue regardless of whether an identification is made;

15 (4) composing the lineup so that the fillers
16 generally resemble the eyewitness's description of the
17 perpetrator so that the suspect does not unduly stand out from
18 the fillers;

19 (5) using at least four fillers in a live
20 lineup and at least five fillers in a photo lineup;

21 (6) ensuring, when practicable, that a
22 photograph of the suspect used in a photo lineup is
23 contemporary and resembles the suspect's appearance at the time
24 of the offense;

25 (7) presenting separate photo lineups and live

1 lineups when there are multiple eyewitnesses, ensuring that the
2 same suspect is placed in a different position for each
3 identification procedure;

4 (8) having the administrator seek and document
5 a clear statement from the eyewitness, at the time of the
6 identification and in the eyewitness's own words, as to the
7 eyewitness's confidence level that the person identified is the
8 person who committed the crime;

9 (9) minimizing factors at any point in time
10 that influence an eyewitness to identify a suspect or affect
11 the eyewitness's confidence level in identifying a suspect,
12 including verbal or nonverbal statements by or reactions from
13 the administrator;

14 (10) presenting lineup members one at a time;

15 (11) adopting relevant practices shown to
16 enhance the reliability of an eyewitness participating in a
17 showup procedure, such as:

18 (a) identifying the circumstances under
19 which a showup is warranted;

20 (b) transporting the eyewitness to a
21 neutral, non-law enforcement location where the detained
22 suspect is being held;

23 (c) removing the suspect from the law
24 enforcement squad car;

25 (d) removing restraints from the suspect

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1 when the suspect is being observed by the eyewitness; and

2 (e) administering the showup procedure
3 close in time to the commission of the crime;

4 (12) video recording the entirety of the photo
5 lineup and live lineup and, where practicable, the showup
6 procedure, unless the recording equipment is not reasonably
7 available or the recording equipment fails and obtaining
8 replacement equipment is not feasible; and

9 (13) preserving photographic documentation of
10 all live lineup and photo lineup members and showup suspects,
11 as well as all descriptions provided by the eyewitness of the
12 perpetrator.

13 F. All written departmental eyewitness
14 identification policies shall be made available to the public
15 upon request.

16 SECTION 23. [NEW MATERIAL] TRAINING OF LAW ENFORCEMENT
17 OFFICERS.--The secretary of public safety shall create,
18 administer and conduct training programs for law enforcement
19 officers and recruits on the methods and technical aspects of
20 the eyewitness identification practices and procedures shown by
21 reliable evidence to enhance the accuracy of eyewitness
22 evidence referenced in the Accurate Eyewitness Identification
23 Act.

24 SECTION 24. [NEW MATERIAL] LEGISLATION TO INCREASE,
25 DECREASE OR CREATE PERIODS OF IMPRISONMENT--FISCAL IMPACT

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1 STATEMENTS--PROCEDURE.--

2 A. The New Mexico sentencing commission shall
3 prepare a fiscal impact statement as provided in this section
4 for a bill that:

5 (1) creates a new crime or repeals an existing
6 crime for which imprisonment is authorized;

7 (2) increases or decreases the period of
8 imprisonment authorized for an existing crime;

9 (3) imposes or removes mandatory minimum terms
10 of imprisonment; or

11 (4) modifies the law governing release of
12 inmates in such a way that the time served in prison will
13 increase or decrease.

14 B. A fiscal impact statement shall reflect the
15 estimated change in annual operating costs for the corrections
16 department attributable to the bill if it becomes law. The
17 estimated change in annual operating costs shall reflect the
18 largest annual change from the projected change for the six
19 fiscal years following the effective date of the law and shall
20 be calculated in current dollars. The fiscal impact statement
21 shall include details concerning any increase or decrease in
22 the inmate population.

23 C. If the New Mexico sentencing commission does not
24 have sufficient information to project the fiscal impact, the
25 fiscal impact statement shall state that there is insufficient

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1 information to estimate the fiscal impact.

2 D. The corrections department shall annually
3 provide the New Mexico sentencing commission with:

4 (1) the average operating costs per inmate and
5 the number of inmates in adult correctional facilities; and

6 (2) admissions and release data for all
7 inmates in adult correctional facilities.

8 E. The judiciary shall annually provide the New
9 Mexico sentencing commission with requested data necessary to
10 prepare fiscal impact statements.

11 F. As used in this section, "operating costs" means
12 all costs other than capital outlay costs for state-operated
13 adult correctional facilities and privately operated adult
14 correctional facilities.

15 SECTION 25. REPEAL.--Section 31-21-25.1 NMSA 1978 (being
16 Laws 1994, Chapter 21, Section 3) is repealed.

17 SECTION 26. APPLICABILITY.--The provisions of:

18 A. Section 12 of this act apply to a person serving
19 a term of incarceration on July 1, 2019 and to a person whose
20 term of incarceration commences on or after July 1, 2019; and

21 B. Section 16 of this act apply to a person who is
22 serving a term of parole on July 1, 2019 and to a person whose
23 parole term commences on or after July 1, 2019.

24 SECTION 27. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2019.

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