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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/2020
LAST UPDATED 2/18/2020 **HB** 263/HJCS

SPONSOR HJC

SHORT TITLE Probation & Parole Clarification **SB** _____

ANALYST Rabin

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY20	FY21	FY22		
NFI	\$1,000.0	NFI	Nonrecurring	General Fund
NFI	(\$1,000.0)	NFI	Nonrecurring	NMCD Intensive Supervision Fund
NFI	(\$1,500.0)	(\$3,000.0)	Recurring	NMCD Operating Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY20	FY21	FY22	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	NFI	\$1,500.0	\$3,000.0	\$4,500.0	Recurring	General Fund (replacement of probation and parole fee revenue)
NMCD	NFI	\$610.0	\$610.0	\$610.0	Recurring	General Fund (3 FTE to fulfill provisions of bill related to medical and geriatric parole)
NMCD/ other relevant state agencies	Likely Minimal—See Fiscal Implications				Recurring	General Fund (savings due to decreased recidivism, detention, and incarceration)

(Parenthesis () Indicate Expenditure Decreases)

Relates to Appropriation in the General Appropriation Act of 2020

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General’s Office (NMAG)
Adult Parole Board (APB)
Department of Public Safety (DPS)
New Mexico Corrections Department (NMCD)
Public Defender Department (PDD)

Responses Regarding Original Bill Received From

Administrative Office of the District Attorneys (AODA)
Administrative Office of the Courts (AOC)
New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

The House Judiciary Committee Substitute for House Bill 263 makes numerous changes to statutes governing the state’s system of probation and parole (supervision), including amending the process for determining the conditions of supervision, eliminating some probation and parole fees, and creating a new system of medical and geriatric parole. Additionally, HB263/HJCS amends existing law governing violations of supervision conditions and adds two new sections of law related to technical supervision violations; however, as written, HB263/HJCS offers little change from the current system of dealing with supervision violations (for more detail, see the “Supervision Violations” subsection of this synopsis on pages 3 through 4 and see the “Supervision Violations” subsection of the “Significant Issues” section on pages 6 through 11, as well as Attachments 1 through 4).

Supervision Conditions. Sections 1 through 4 and 6 through 8 of HB263/HJCS amend what supervision conditions may be imposed and what must be considered in imposing supervision conditions.

Section 2 of HB263/HJCS amends Section 31-20-5 NMSA 1978 to add a purpose statement for probation, including enforcing victim restitution, holding an individual accountable for their actions, promoting an individual’s reintegration into society, and reducing the risk of new offenses.

Sections 1, 3, and 7 of HB263/HJCS remove the ability of the court or Parole Board to make payment of probation and parole costs a condition of supervision. Section 14 reverts any balances in the Corrections Department’s (NMCD) intensive supervision fund on January 1, 2021, to the general fund.

Section 2 requires the court consult a validated risk and needs assessment, if provided by NMCD, when determining the conditions of parole; Section 6 of the bill clarifies that, on the order of any court, NMCD must prepare a presentence report that includes, among other relevant information, the results of any validated risk and needs assessment that may have been

administered. Section 8 also requires a judge to consult the assessment results, if available, before imposing an intensive supervision program as a condition of supervision. A judge may not require an intensive supervision program without either a recommendation from NMCD or consultation of a risk and needs assessment.

Section 4 of this bill requires NMCD to operate supervision for both probation and parole based on the application of a valid risk and needs assessment and principles of effective intervention to reduce criminogenic risk and needs factors, focus supervision resources on the initial period of supervision, recommend and enforce conditions that include cognitive behavior programming to address criminal thinking and address basic needs and transitional requirements, and apply a consistent system of incentives and graduated sanctions to promptly respond to positive and negative behavior of supervisees.

Supervision Violations. Sections 9, 10, 12, and 13 establish processes for dealing with technical and standard violations of supervision conditions. The exact processes established by these sections are complex and, in some cases, the bill’s intent is unclear. The processes that appears to be established, as well as potential issues, are described in the “Supervision Violations” subsection of the “Significant Issues” section of this analysis (pages 6 through 11) and the revised processes are outlined through flowcharts in Attachments 1 through 4.

Effectively, the provisions of HB263/HJCS result in the following possible consequences for supervision violations:

- For standard violations of probation conditions, the court may continue probation, revoke probation, or impose any other order as the court sees fit. *This puts no limit on the consequences the board may impose and is effectively an **expansion** of the potential conditions for probation violations under current law.* (See Attachment 1)
- For standard violations of parole conditions, the board may choose to continue parole, revoke parole, impose a fixed term of detention up to 90 days (which is counted as time served), or impose any other order as the board sees fit. *This puts no limit on the consequences the board may impose and is effectively equivalent to potential consequences for all parole violations under current law.* (See Attachment 2)
- For technical violations of probation conditions, NMCD may impose nondetention sanctions or seek a waiver from a probationer to impose a sanction of 3 or 7 days of detention. If the violation goes before the court for a technical violation hearing, the court may continue the original probation, revoke probation, or impose a sentence (for deferred sentences). *The potential consequences imposed by the court are equivalent to potential consequences for all probation violations under current law.* (See Attachment 3)
- For technical violations of parole conditions, NMCD may impose nondetention sanctions or may seek a waiver from a parolee to impose a sanction of 3 or 7 days of detention. If the parolee refuses to sign the waiver, the process proceeds to “formal resolution,” which is undefined. *Because this process is undefined, it is unclear how it compares to current law.* (See Attachment 4)

HB263/HJCS defines a standard violation as “absconding or violating any municipal or county ordinance or tribal, state or federal criminal law.” Absconding means that “a person under supervision willfully makes the person's whereabouts unknown to the person's probation and parole officer or willfully fails to report as ordered and, in addition, reasonable efforts by the probation and parole officer to locate the person have been unsuccessful.” Reasonable efforts are

defined as “at a minimum, checking with a probationer's or parolee's emergency contact, last known address, last known employment and hospitals and jails in the area.”

A technical violation is defined as a violation of supervision conditions that does not constitute a standard violation and includes instances in which a supervisee fails to make a scheduled appointment and either 1) the probation and parole officer fails to perform reasonable efforts to locate the supervisee or 2) the supervisee makes their whereabouts known to the probation and parole officer or reports to the officer prior to the completion of the officer’s reasonable efforts to locate them.

HB263/HJCS requires NMCD to report data related to probation and parole violations and adjudication, such as the number of warrants sought and issued, the number of arrests made, the number of notices to appear issued, penalties for violations, and other relevant metrics. NMCD is required to provide these data to the Legislature and the governor and post the information to its website by December 1 of each year, starting in 2021.

Medical and Geriatric Parole. Section 11 codifies procedures for medical or geriatric parole, a form of early release. The bill specifies factors for NMCD to consider when recommending an inmate for such parole, including age, health, institutional behavior, risk for violence, and other alternatives. The final decision is left to the Parole Board, but the board shall release an inmate on medical or geriatric parole upon recommendation from NMCD unless the board finds by clear and convincing evidence that the inmate’s release is incompatible with the welfare of society. The board must state the reasons for such a finding in writing and cannot deny medical or geriatric parole solely because of the inmate’s criminal history. Section 15 repeals Section 31-21-25.1, which previously gave the parole board the authority to grant early parole to geriatric or medically incapacitated inmates.

Other Provisions. Section 5 of HB263/HJCS amends the definitions section of the Probation and Parole Act to add definitions for absconding and reasonable efforts, technical and standard violations, and geriatric, permanently incapacitated, and terminally ill inmates. The bill also updates the definitions of institution and director to align with NMCD’s current organizational structure and facilities and amends the definition of probation to include release of individuals under conditional discharge and remove the requirement that individuals have been found guilty of a crime upon verdict or plea.

Section 16 specifies that the provisions of Sections 12 and 13 of HB263/HJCS apply to all individuals on supervision on January 1, 2021, and all individuals whose supervision commences after January 1, 2021. The provisions of Sections 2, 4, 6, and 8 that pertain to the use of risk and needs assessments apply to judges determining conditions of probation, persons waiting to be sentenced, persons on supervision, and persons placed on supervision on or after July 1, 2021. Section 17 specifies that the effective date of this bill is January 1, 2021.

FISCAL IMPLICATIONS

The Sentencing Commission (NMSC) notes the average per-day cost to incarcerate someone in the state’s prison system is \$110.74 (about \$40.4 thousand annually); this average includes private and public facilities. The average cost for detaining an individual in a jail is \$95/day (about \$34.7 thousand annually).

Supervision Conditions. NMCD’s Probation and Parole Division receives significant revenues from probation and parole fees charged to offenders. HB263/HJCS would remove these fees and would revert the balance in the department’s intensive supervision fund to the general fund. NMCD estimates it receives about \$3 million in annual revenue from these funds; this analysis estimates removing this funding source for half of FY21 would result in about \$1.5 million in decreased revenue and additional general fund operating costs, while in future fiscal years the impact would be the full \$3 million. NMCD estimates that the balance remaining in the intensive supervision fund on January 1, 2021, will be about \$1 million.

Requiring NMCD to orient its supervision policies around risk and needs assessments may create some additional costs; however, the current version of the General Appropriation Act of 2020 includes a \$750 thousand recurring appropriation to NMCD to expand the administration of risk and needs assessment to the supervision population, which should cover most of these costs.

Supervision Violations. It is unclear if the provisions of this bill addressing violations of supervision conditions will increase detention or reincarceration of supervisees. It is not possible to establish whether the provisions of this bill will increase or decrease detention of parolees prior to adjudication of an accusation of parole violation, and therefore the fiscal impact cannot be estimated. This bill will likely decrease total detention of alleged probation violators pre-adjudication, which would have some positive fiscal impact to jails and courts but is unlikely to directly impact the state’s prison system. The changes made to the consequences for technical and standard probation and parole violations are either minimal or unclear and are unlikely to have a significant fiscal impact.

While NMCD did not include a description of its current policies regarding violations in the analysis submitted for the introduced version of this bill, it is unlikely the provisions of Section 12 will have a substantial impact, fiscal or otherwise, on its operations, because the system NMCD is instructed to develop is very open-ended. Because the formal resolution process noted in Section 13 is not defined, it is unclear what impact this section might have on the department.

Additional discussion of the changes made to supervision violation processes, and the difficulties faced in establishing the impact of those changes, are included in the “Supervision Violations” section of the “Significant Issues” section of this analysis on pages 6 through 11, and the processes are outlined in Attachments 1 through 4.

Medical and Geriatric Parole. A 2018 LFC program evaluation found in FY18 the Parole Board received 19 applications for medical parole and granted five, or 26 percent. Of the 19 applications, two were for inmates who were either discharged or dead. Overall, the board held 3,811 hearings; medical parole applications accounted for 0.5 percent of total activity. In 2008, the Pew Center on the States’ Public Safety Performance Project identified the average cost of an older prisoner to be \$70 thousand per year. Accounting for medical inflation, the LFC evaluation estimated the state paid about \$1.1 million in FY18 for geriatric medical costs alone that could have been avoided.

In its analysis of the medical and geriatric provisions of a similar bill in the 2019 session (HB564), NMCD estimated that the fiscal impact of these provisions would be significant, as the department may need to consult with its medical vendor or other medical staff to determine if a particular inmate’s medical or physical conditions makes them terminally ill or permanently and irreversibly physically incapacitated. In that analysis, NMCD estimated it would need to hire a

medical director, psychiatric director, and an epidemiologist to accurately make such assessments; NMCD estimated the cost of salaries and benefits for those positions to total \$610 thousand annually.

SIGNIFICANT ISSUES

Supervision Conditions

Section 6 states that, upon the order of any court, NMCD must prepare a presentence report that includes the results of any validated risk and needs assessment that may have been administered. In its analysis of the introduced version of HB263, NMCD noted that it would not generally have an assessment completed pre-adjudication. Additionally, the bill does not define “validated risk and needs assessment” or “validated,” so it is not clear what assessments would qualify under the provisions of this bill. Assessments may be validated across different populations and validation may be vendor-driven or provided independently. The vast difference in interpretations of validation may cause issues when implementing the provisions of this bill and such ambiguities may lead to litigation. It may therefore be desirable to add a definition to clarify legislative intent regarding what qualifies as a validated risk and needs assessment.

The language of Section 4 requires NMCD recommend cognitive behavioral programming as a condition for all supervisees. While some cognitive behavioral programming is evidence-based, the bill does not require supervisees be enrolled in evidence-based programs. Additionally, cognitive behavioral programming may not be the best programming option for all offenders. This provision may limit NMCD’s flexibility to make recommendations best suited for individual offenders. Additionally, Section 8 removes the maximum caseload of 40 offenders for probation and parole officers providing intensive supervision programs and instead requires officers have “the training, resources and caseloads that allow them to operate effectively,” which creates room for differing interpretations and potential litigation over what constitutes effective operations and what training, resources, and caseloads are sufficient to allow this.

Section 8 requires an individual score as high risk on a validated risk and needs assessment to be recommended for intensive supervision but does not define “high risk.” Not all assessments qualify offenders in those terms, and the definitions they use may vary by vendor. This ambiguity leaves significant room for interpretation and potential disagreement and litigation.

Supervision Violations

HB263/HJCS creates separate systems to deal with “standard” and “technical” violations of probation and parole conditions. Standard violations are defined as absconding or violating any municipal or county ordinance or tribal, state, or federal law, while technical violations encompass any other violations of supervision conditions and includes instances in which a supervisee fails to make a scheduled appointment and either 1) the probation and parole officer fails to perform reasonable efforts to locate the supervisee or 2) the supervisee makes their whereabouts known to the probation and parole officer or reports to the officer prior to the completion of the officer’s reasonable efforts to locate them.

Standard violations include “violating any municipal or county ordinance or tribal, state or federal criminal law.” The Public Defender Department (PDD) notes the second “or” in the clause separates ordinances from the modifier of “criminal.” As a result, PDD states “It would

seem that violating most ordinances, like getting a parking ticket, a citation for having a dog off leash, etc., should be considered a technical violation at most (or should not be a violation of probation or parole conditions at all).” To target the commission of new crimes, PDD recommends limiting standard violations to violating any “municipal, county, tribal, state, or federal criminal law.”

PDD also raises concerns that the definition of “absconding,” which is a standard violation, still includes a large category of violations related to missed appointments that the department believes should be sanctioned as technical violations.

Sanctions. Sections 12 and 13 of HB263/HJCS establish a system for NMCD to impose intermediate sanctions on individuals who commit technical violations of supervision conditions prior to bringing violators before the court or Parole Board for probation or parole revocation hearings. Section 12 requires NMCD to develop an incentives and sanctions system to guide responses to negative and positive behavior by supervisees and requires such a system to provide for graduated responses to technical violations in a swift, certain, and proportional manner; however, the bill does not specify what those graduated responses will be, except to note they may include nondetention sanctions or detention sanctions of three or seven days, which shall be counted as time served under the supervisee’s sentence. The bill does not specifically prohibit the department from using other periods of detention as sanctions. The lack of clarity offered by these provisions may create ambiguity in interpretation and lead to litigation.

Under Section 13 of this bill, probation and parole officers who wish to impose detention for a technical violation must receive the approval of their supervisors and must seek a signed waiver from the supervisee acknowledging the violation and accepting the proposed detention sanction. If the waiver for a probationer is rejected, the officer must report the alleged violation to the court, which is expected to trigger a technical violation process under Section 10. If the waiver for a parolee is rejected, the officer must report the alleged violation to the Parole Board and proceed to formal resolution (not defined; see “Hearings or Other Adjudication,” pages 10 through 11).

PDD notes the provisions of Section 13 requiring supervisees to receive advice of counsel before signing a waiver to allow a detention sanction raises serious questions about the scope of PPD representation. According to PPD, it could be argued that attorneys who currently only begin working on a probation violation case to defend an allegation of a violation in a court of law would be required to appear to advise nonclients about waiving a courtroom adjudication, including for parolees who normally do not receive PPD representation at all. PPD states it is not realistic for counsel to advise a supervisee at the time a probation or probation officer wants to seek incarceration on a technical violation, and instead recommends incorporating the waiver process into the original sentencing hearing when the court originally orders probation and/or parole.

Arrest or Notice to Appear and Detention Pending Hearings for Probationers. The overall effect of the provisions of HB263/HJCS on arresting probationers, issuing probationers notices to appear, and detaining probationers pending hearings will likely be to decrease total detention because under current law all alleged probation violations may result in detention. Under HB263/HJCS, the only probationers who may be detained are those who are alleged to have committed standard violations or who are alleged to have committed a technical violation but are

on probation due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense.

Under current law, a warrant or notice to appear may be issued for probationers who are believed to have committed any violation. Probationers arrested under a warrant shall be detained until the time of a parole revocation hearing. Probationers may also be arrested without a warrant and detained until the time of a hearing if the director of NMCD’s Probation and Parole Division (“the director”) determines they have committed any violation.

Under the provisions of Section 10 of HB263/HJCS, probationers alleged to have committed a standard violation may be arrested with or without a warrant, and may be detained until the time of a hearing. For probationers alleged to have committed a technical violation, the court may issue a notice to appear, at which point the court will initiate a technical violation hearing (see “Hearings or Other Adjudication,” pages 10 through 11).

The court may issue a warrant for the arrest of a probationer for an alleged technical violation if the individual is on probation due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense. The issuance of a warrant is not specifically clarified to authorize detention; this analysis assumes a warrant may contain such authorization, but it may be helpful to provide additional clarification here; such clarity does exist under current law. HB263/HJCS does not establish a process for arresting such offenders alleged to have committed technical violations without a warrant. HB263/HJCS does not establish that these probationers should be treated, for purposes of hearings, in the same manner as those alleged to have committed standard violations, so it is assumed these probationers will also be subject to a technical violation hearing, rather than a probation revocation hearing.

A probationer alleged to have committed a technical violation may be arrested without a warrant if a probation and parole officer believes they pose a flight risk or danger to the community, but the bill does not provide authority for them to be detained pending a hearing. Additionally, the bill does not establish that these probationers should be treated, for purposes of hearings, in the same manner as those alleged to have committed standard violations, so it is assumed these probationers will also be subject to a technical violation hearing, rather than a probation revocation hearing.

These provisions are illustrated in Attachments 1 and 3.

Arrest or Notice to Appear and Detention Pending Hearings for Parolees. The overall effect of the provisions of HB263/HJCS governing arresting parolees, issuing parolees notices to appear, and detaining parolees pending hearings is to require all parolees accused of standard violations to be detained while not providing authority for *any* parolees accused of technical violations to be detained. Because current law gives the director and the Parole Board some discretion over detention, it is unclear what impact this change may have.

Under current law, a warrant or notice to appear may be issued for parolees believed to have committed any violation. Parolees arrested under a warrant shall be detained until the time of a parole revocation hearing. Parolees may also be arrested without a warrant if the director determines they have committed any violation and may only be detained until the time of the hearing if authorized by the director or the Parole Board.

Under the provisions of Section 9 of HB263/HJCS, parolees alleged to have committed standard violations may be arrested with a warrant issued by the Parole Board or the director or without a warrant if authorized by the director. While the bill states the Parole Board or director must authorize detention, Subsection B of Section 9 states that parolees shall remain incarcerated pending a hearing for a charge of a standard violation; as a result, it appears all parolees charged with a standard violation *must* be detained.

The director or the Parole Board may issue a notice to appear for parolees alleged to have committed a technical violation, which shall initiate a technical violation process in accordance with Sections 12 and 13 of this bill (see “Hearings or Other Adjudication,” pages 10 through 11).

A parolee who is on parole due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense may also be arrested without a warrant if a probation and parole officer judges the parolee has committed a technical parole violation or believes the parolee to be a flight risk or a danger to the community. HB263/HJCS does not establish a process for issuing a warrant for such offenders alleged to have committed technical violations; significantly, the authority for arresting without a warrant is shifted from the director to a probation and parole officer. Additionally, the bill does not establish a process for detention of these parolees or establish they should be treated (for purposes of detention or parole revocation hearings) in the same manner as parolees alleged to have committed standard violations. Therefore, for purposes of this analysis, it is assumed these offenders will also be addressed by the process outlined in Sections 12 and 13 for technical violations, and the bill does not appear to provide authority for them to be detained while that process unfolds.

These provisions are illustrated in Attachments 2 and 4.

Fugitive Status. Under current law, supervisees for whom a warrant has been issued but cannot be served are declared fugitives from justice. If it appears the supervisee has committed a violation, the Parole Board or court shall determine whether the time between the time of the alleged violation to the date of the supervisee’s arrest, or any part of it, shall be counted as time served. Under the provisions of HB263/HJCS, supervisees for whom a warrant has been issued but cannot be served are still declared fugitives; this may only include parolees alleged to have committed standard violations, but may include probationers alleged to have committed standard violations *as well as* those who are alleged to have committed technical violations and are on probation due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense, as a warrant may be issued for their arrest. Because the bill does not include a process for issuing warrants for parolees alleged to have committed technical violations who are on probation due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense, those parolees cannot be declared fugitives.

Under the provisions of Section 10 of HB263/HJCS, as under current law, for probationers declared fugitives, the court shall determine whether the time between the alleged violation to the date of the probationer’s arrest, or any part of it, shall be counted as time served. However, Section 9 creates a new subsection specifying the Parole Board shall determine if the time between any parolee’s alleged violation and their arrest, or any part of it, shall count as time served (this applies to all parolees, not just those declared fugitives). It is unclear what effect this will have.

Hearings or Other Adjudication. The provisions of HB263/HJCS make minimal or unclear changes to the current consequences a supervisee may face for committing a technical or standard violation. Parolees who commit standard violations or probationers who commit technical violations face the same consequences under HB263/HJCS as under current law, while probationers who commit standard violations may face any consequence the court sees fit to impose—a broader set of consequences than under existing law. It is unclear what consequences parolees who commit technical violations may face, as the process for addressing such violations is left up to NMCD or, if NMCD wishes to impose detention, may result in an undefined process of formal resolution.

Under current law, parolees who are arrested and detained are guaranteed a prompt parole revocation hearing before the Parole Board. If any violation is established to have occurred, the board may continue the parole, revoke the parole, or enter any other order it sees fit.

Under Section 9 of HB263/HJCS, only parolees charged with standard violations receive a parole revocation hearing. If a standard violation is established to have occurred, the board may continue the parole, revoke the parole, impose detention for a fixed term up to 90 days (which shall count as time served), or enter any other order it sees fit. While this enumerates another option for the outcome of these hearings, it does not substantively alter the options offered to the board to address standard violations, as both HB253/HJCS and current law include the option for the board to enter any other order it sees fit.

Parolees alleged to have committed technical violations (including those on parole due to a plea or conviction for a sex offense, serious violent offense, or human trafficking offense) undergo the technical violation process outlined in Sections 12 and 13 of HB263/HJCS. This section is focused on the process for seeking detention of a supervisee alleged to have committed a technical offense. If the parolee refuses to sign a waiver allowing their detention, the process moves to formal resolution, which is undefined.

Under current law, probationers receive a hearing before the court on any violation charged. If the violation is established, the court may continue the original probation or revoke the probation and either order a new probation (with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978) or require the probationer to serve the balance of the sentence imposed or any other lesser sentence. In cases of deferred sentences, the court may impose any sentence that might originally have been imposed, but the probationer shall receive credit for time served on probation.

Under Section 10 of HB263/HJCS, probationers charged with standard violations receive a probation revocation hearing before the court. If the standard violation is established, the court may continue probation, revoke probation, or enter any other order it sees fit. In effect, HB263/HJCS broadens the options for sanctions the court may impose on probationers for standard violations.

Probationers charged with technical violations receive a technical violation hearing. If the technical violation is established, the court may continue the original probation or revoke the probation and either order a new probation (with any condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978) or require the probationer to serve the balance of the sentence imposed or any other lesser sentence. In cases of deferred sentences, the court may impose any sentence that might originally have been imposed, but the probationer shall receive credit for time served

on probation. Essentially, this maintains the same process for technical violations as exists under current law.

These processes are illustrated in Attachments 1 through 4.

Medical and Geriatric Parole

The Parole Board raises the concern that shifting duties related to medical and geriatric parole to NMCD violates the board’s enabling statute. Under Section 31-21-25 NMSA 1978, only the board has the powers and duty to grant, deny, or revoke parole.

NMSC notes that, as of June 30, 2018, 3 percent of the state’s confined male population and 1 percent of the confined female population was 65 or older.

RELATIONSHIP

The current version of the General Appropriation Act of 2020 includes a \$750 thousand recurring appropriation to NMCD to expand the administration of risk and needs assessment to the supervision population, which may cover most of the increased costs of expanding use of risk and needs assessments for supervision as required in this bill.

TECHNICAL ISSUES

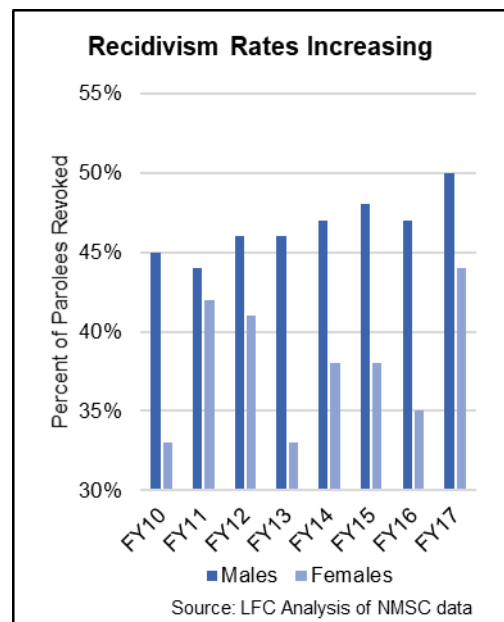
To address concerns raised in the “Significant Issues” section of this analysis (pages 6 through 11), the terms “formal resolution,” “validated risk and needs assessment,” and “high risk” should be defined. Failing to define these terms results in significant ambiguity and may lead to differing interpretations and resultant litigation.

OTHER SUBSTANTIVE ISSUES

In October 2018, the Legislative Finance Committee released a program evaluation of the Corrections Department. According to New Mexico Sentencing Commission data, those returning to prison represented 41 percent of all admissions in FY17. In FY17, NMCD reported a recidivism rate over 50 percent for the first time in the past decade, a 5 percent increase since FY10 or the equivalent of approximately \$6 million per year in additional costs.

One of the report’s findings encouraged NMCD to improve case management of parolees to ensure connection to services, implement evidence-based programs statewide (including graduated interventions, short jail-time, etc.) to maximize attempts to divert offenders from full revocation.

According to the Bureau of Justice Assistance (BJA) and the Substance Abuse and Mental Health Services Administration (SAMSHA), the most important step in



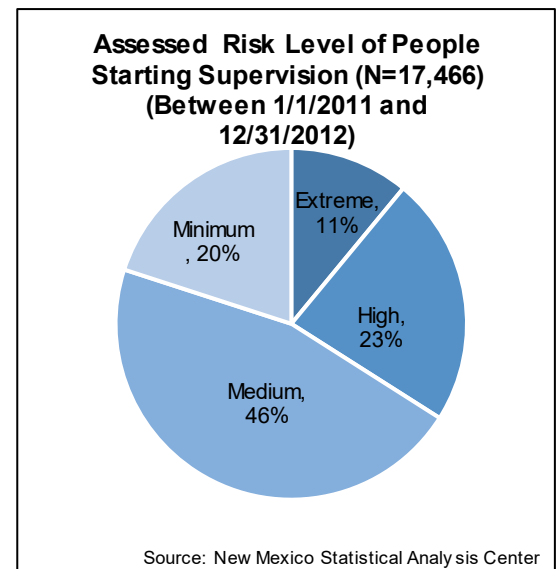
reentry planning is obtaining information about an individual’s risk of reoffending and programmatic needs. Once a validated risk and needs instrument is used, the implementation of evidence-based programs can be better targeted to individual inmates to achieve outcomes like recidivism reduction, educational attainment, stable housing, and consistent employment. The U.S. Department of Justice identifies five principles of recidivism reduction, four of which are highlighted below:

- Principle I: On incarceration, every inmate should be provided an individualized reentry plan tailored to his or her risk of recidivism and programmatic needs.
- Principle II: While incarcerated, each inmate should be provided education, employment training, life skills, substance abuse, mental health, and other programs that target their criminogenic needs and maximize their likelihood of success upon release.
- Principle III: Before leaving custody, every person should be provided comprehensive reentry-related information and access to resources necessary to succeed in the community.
- Principle IV: During transition back to the community, halfway houses, and supervised release programs should ensure individualized continuity of care for returning citizens.

The 2018 LFC evaluation also recommended that NMCD work with state health agencies to discuss methods of incentivizing long-term care providers in the community to accept medical parole-eligible inmates to make better use of medical parole rules. Section 31-21-25.1 NMSA 1978 provides for approval or denial of applications by inmates for medical and geriatric parole for low-risk geriatric, permanently incapacitated, or terminally ill inmates. However, statute does not require the department to report on inmates eligible for medical parole for consideration by the Parole Board.

Many inmates in New Mexico are not granted medical parole because correctional staff cannot arrange for a long-term care facility (LTC) placement for them. Regulations surrounding LTC facilities are numerous, including federal rule F224 established by the Centers for Medicare and Medicaid Services, which states, “Each resident has the right to be free from mistreatment, neglect and misappropriation of property. This includes the facility’s identification of residents whose personal histories render them at risk for abusing other residents, and development of intervention strategies to prevent occurrences, monitoring for changes that would trigger abusive behavior, and reassessment of the interventions on a regular basis.” According to NMCD, rule F224 is often used as justification by LTC facilities for denying patients with felony history. As a result, inmates who need care that is difficult to obtain in prison settings remain incarcerated, driving up medical costs.

The LFC report explains “Efforts should be made by the Human Services Department and the Department of Health to develop incentives for long term care and nursing home providers to accept hard-to-place patients, including those with criminal backgrounds. Strategies like providing special insurance or bonds to help mitigate risk for providers who accept hard-to-place individuals may help enhance the use of medical parole.”

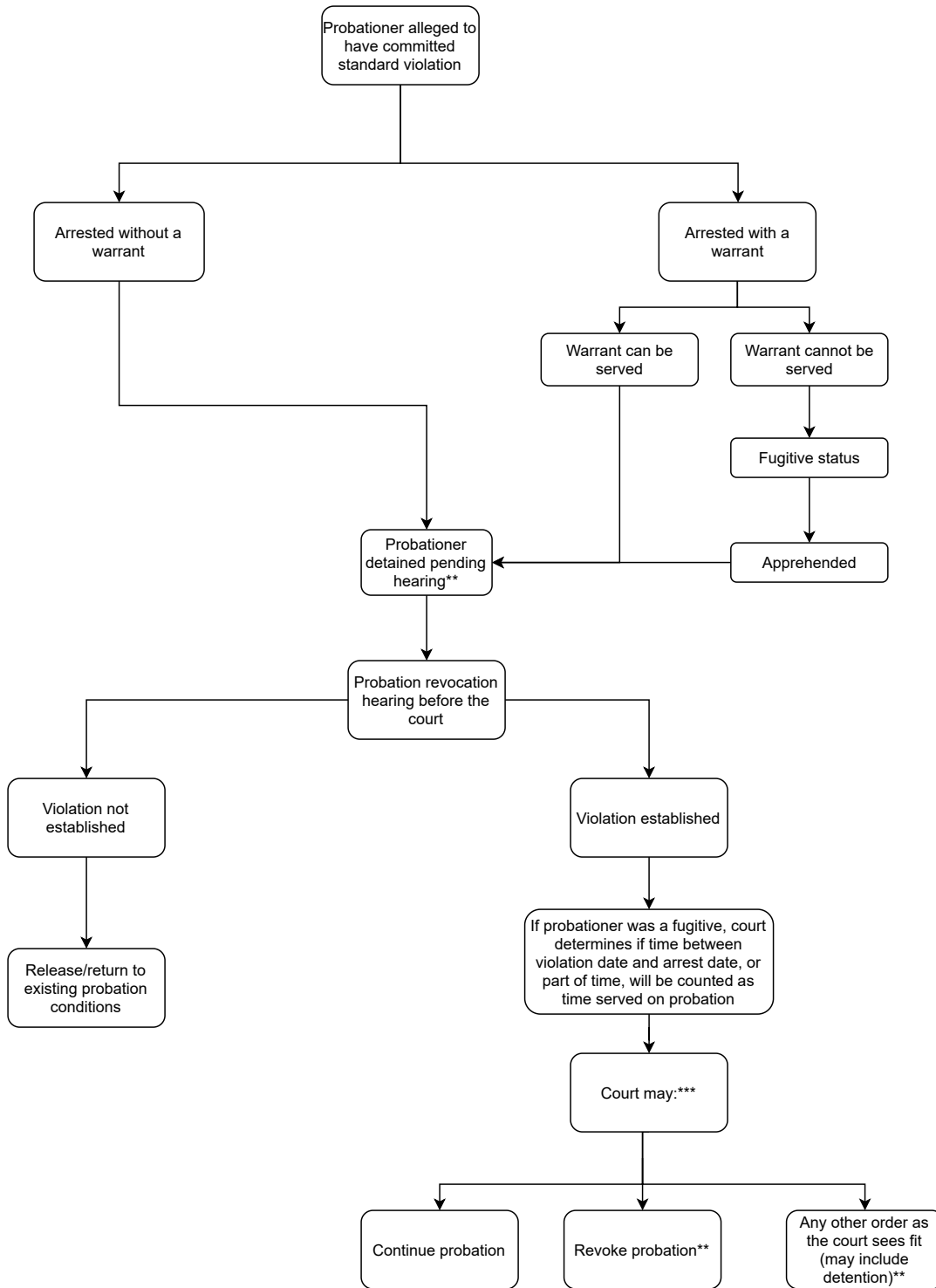


Attachments

1. HB263/HJCS Process for Addressing Standard Probation Violations
2. HB263/HJCS Process for Addressing Standard Parole Violations
3. HB263/HJCS Process for Addressing Technical Probation Violations
4. HB263/HJCS Process for Addressing Technical Parole Violations

ER/rl/al/sb/rl

**House Judiciary Committee Substitute for House Bill 263 Process
for Addressing Standard Probation Violations**

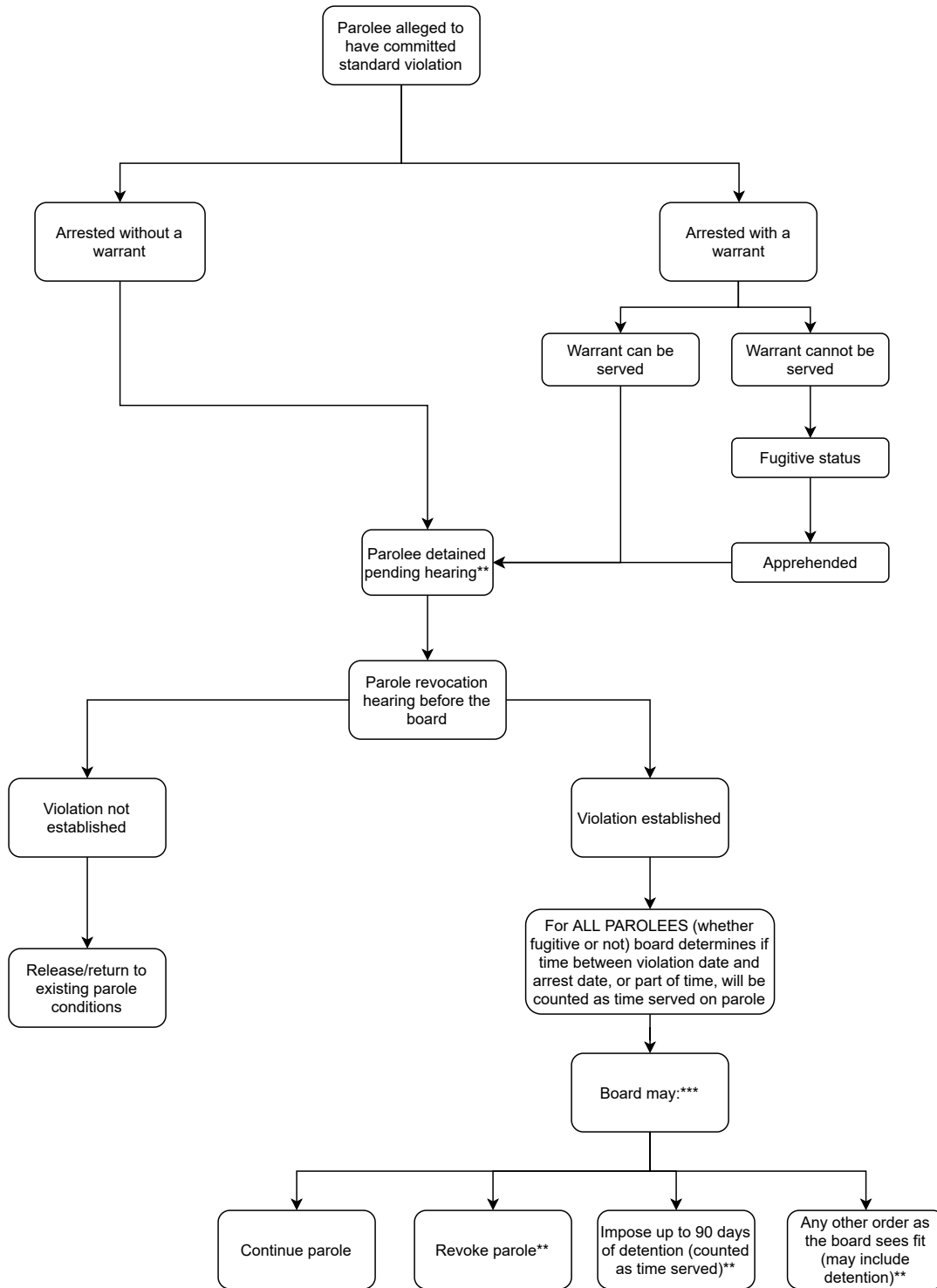


NOTES:

**Offender is detained

***Court options under bill represent effective expansion of options offered under current statute

House Judiciary Committee Substitute for House Bill 263 Process for Addressing Standard Parole Violations

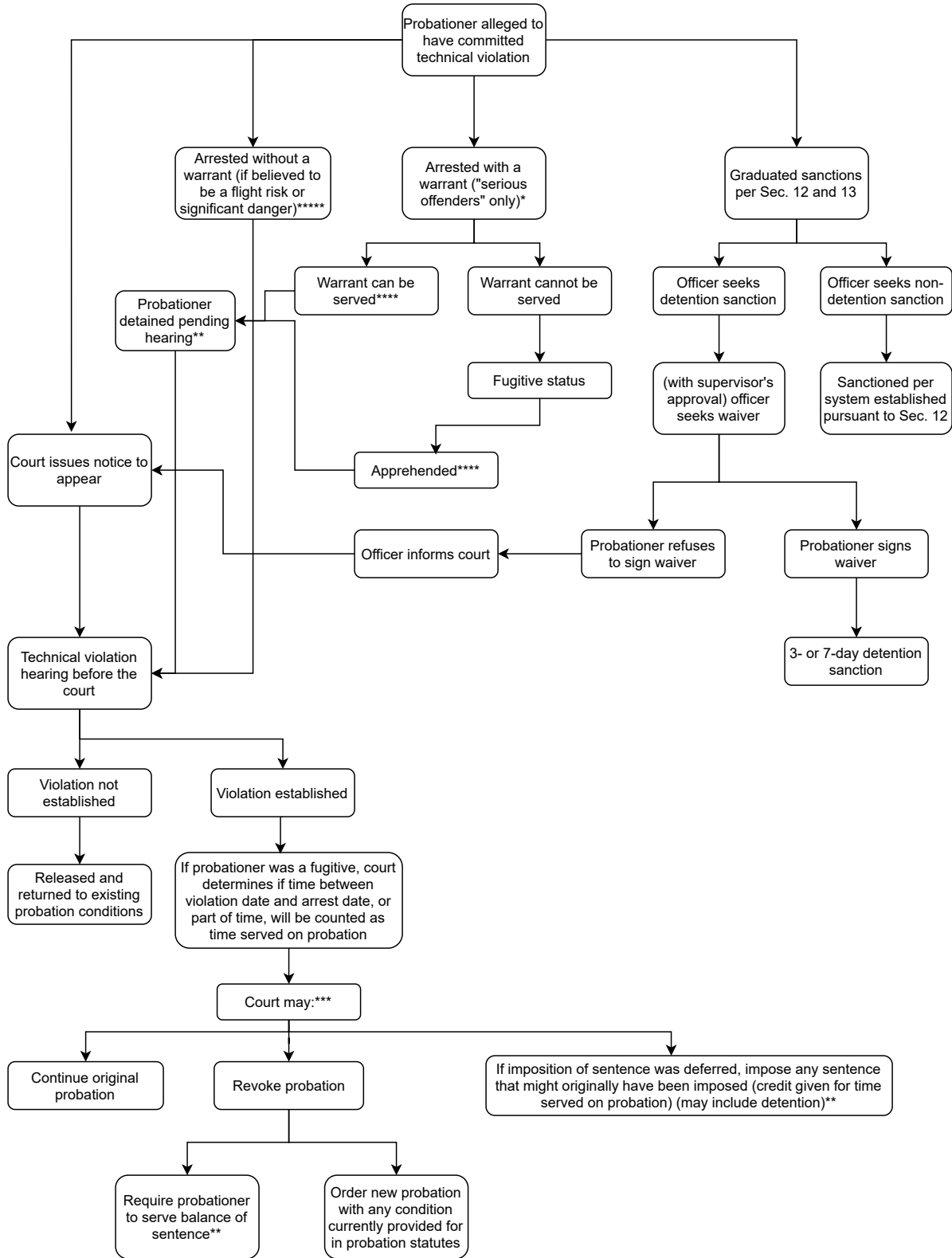


NOTES:

**Offender is detained

***Board options under bill are effectively the same as current statute (adds new option, but "any other order" was already an option, so this does not change the options actually available to the board)

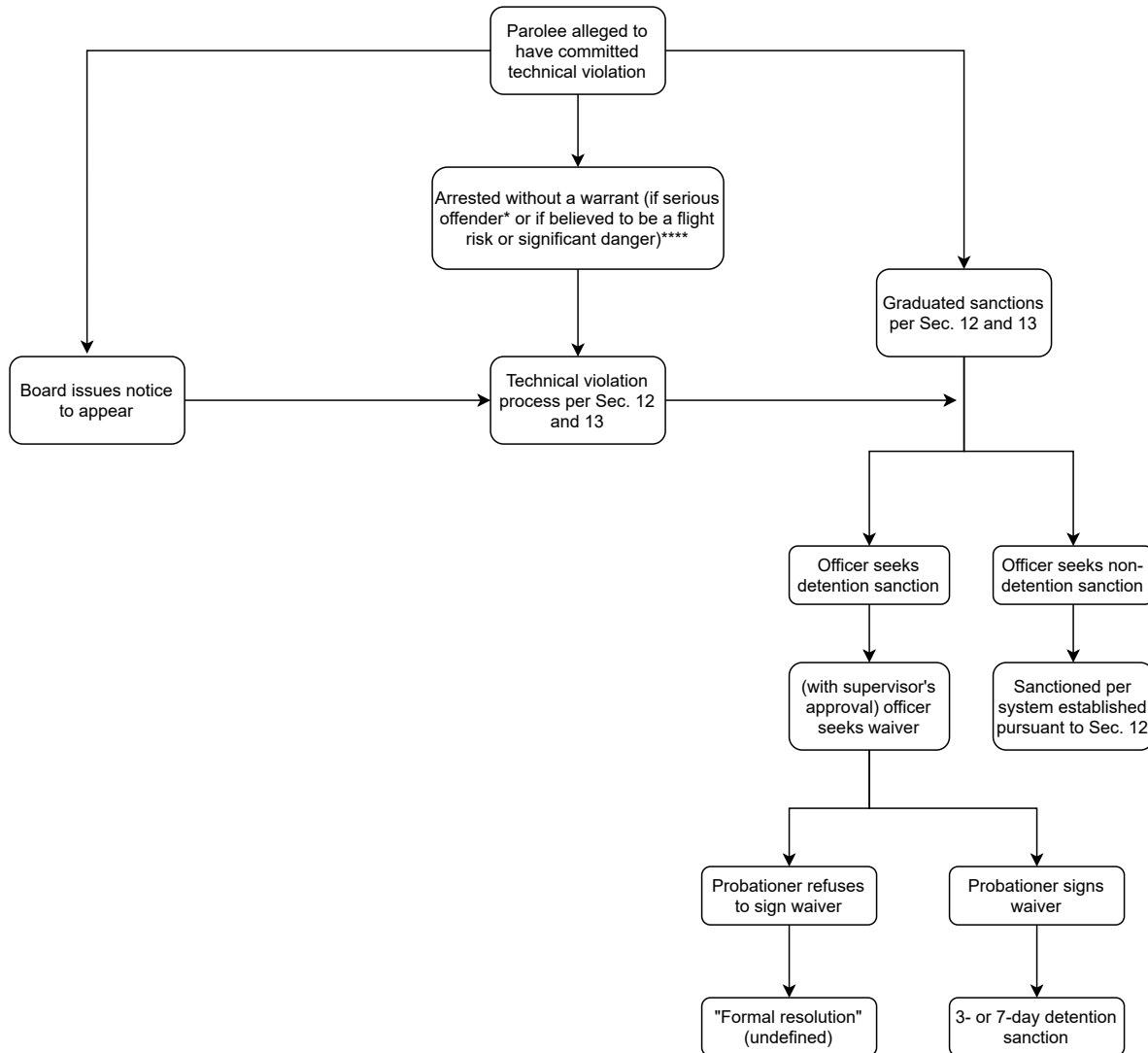
House Judiciary Committee Substitute for House Bill 263 Process for Addressing Technical Probation Violations



NOTES:

- *For purposes of this diagram, "serious offenses" include sex offenses, serious violent offenses, and human trafficking offenses
- **Offender is detained
- ***Court options under bill are the same as under current statute
- ****Bill does not explicitly provide authority for detention of offenders alleged to have committed technical violations arrested with a warrant, but a warrant is assumed to convey such authority.
- *****Bill does not explicitly provide authority for detention of offenders arrested without a warrant

House Judiciary Committee Substitute for House Bill 263 Process for Addressing Technical Parole Violations



NOTES:

*For purposes of this diagram, "serious offenses" include sex offenses, serious violent offenses, and human trafficking offenses

**Offender is detained

***Court options under bill are the same as under current statute

****Bill does not provide authority for detention of offenders arrested without a warrant