

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE HEALTH AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 84

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO CRIMINAL JUSTICE; LIMITING INCARCERATION FOR
TECHNICAL VIOLATIONS OF PROBATION AND PAROLE; ALPHABETIZING
DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

A. "adult" means a person convicted of a crime by a
district court;

B. "board" means the parole board;

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

1 D. "institution" means the state penitentiary and
2 any other similar state institution hereinafter created;

3 E. "parole" means the release to the community of
4 an inmate of an institution by decision of the board or by
5 operation of law, subject to conditions imposed by the board
6 and to its supervision;

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

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

15 ~~G. "institution" means the state penitentiary and~~
16 ~~any other similar state institution hereinafter created;~~

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

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

21 ~~F. "adult" means any person convicted of a crime by~~
22 ~~a district court]~~

23 G. "standard violation of probation" or "standard
24 violation of parole" means any violation not constituting a
25 technical violation; and

1 H. "technical violation of probation" or "technical
 2 violation of parole" means a violation of a condition of
 3 probation or parole that does not either create a threat to the
 4 probationer or parolee or others or does not constitute a new
 5 criminal charge."

6 SECTION 2. Section 31-21-14 NMSA 1978 (being Laws 1955,
 7 Chapter 232, Section 17, as amended) is amended to read:

8 "31-21-14. RETURN OF PAROLE VIOLATOR.--

9 A. At any time during release on parole, the board
 10 or the director may issue a warrant for the arrest of the
 11 [~~released prisoner~~] parolee for [~~violation of any of the~~
 12 ~~conditions of release~~] a standard violation of parole or issue
 13 a notice to appear to answer a charge of any violation. The
 14 notice shall be served personally upon the [~~prisoner~~] parolee.
 15 The warrant shall authorize the [~~superintendent~~] warden of the
 16 institution from which the [~~prisoner~~] parolee was released to
 17 return the [~~prisoner~~] parolee to the actual custody of the
 18 institution or to any other suitable detention facility
 19 designated by the board or the director. If the [~~prisoner~~]
 20 parolee is out of the state, the warrant shall authorize the
 21 [~~superintendent~~] warden to return [~~him~~] the parolee to the
 22 state. For a technical violation of parole, the director shall
 23 issue a notice to appear served personally upon the parolee
 24 unless the director authorizes arrest based on a flight risk or
 25 danger to the community.

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1 B. The director may arrest the [~~prisoner~~] parolee
2 without a warrant or may deputize [~~any~~] an officer with power
3 of arrest to do so by giving [~~him~~] the officer a written
4 statement setting forth that the [~~prisoner~~] parolee has, in the
5 judgment of the director, [~~violated the conditions of his~~
6 ~~release~~] committed a standard violation of parole and the
7 parolee presents a flight risk or danger to the community.

8 Where an arrest is made without a warrant, the [~~prisoner~~]
9 parolee shall not be returned to the institution unless
10 authorized by the director or the board. Pending hearing as
11 provided by law upon [~~any~~] a charge of a standard violation of
12 parole, the [~~prisoner~~] parolee presenting a flight risk or
13 danger to the community shall remain incarcerated in the
14 institution.

15 C. Upon arrest and detention or service of a notice
16 to appear, the board shall cause the [~~prisoner~~] parolee to be
17 promptly brought before it for a parole revocation hearing on
18 the parole violation charged, under rules [~~and regulations~~] the
19 board may adopt.

20 D. If a standard violation of parole is
21 established, the board may continue or revoke the parole and
22 impose non-detention sanctions or a maximum of ninety days of
23 incarceration or enter any other order as it sees fit; provided
24 that the sanction shall be commensurate with the seriousness of
25 the violation and not a punishment for the offense of

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1 conviction. If a technical violation of parole is established:

2 (1) for a first technical violation of parole,
 3 the director shall not impose a sanction of more than three
 4 days of community service, restrictive curfew, behavioral
 5 health treatment or other non-detention sanction;

6 (2) for a second technical violation of
 7 parole, the director shall not impose a sanction of more than
 8 five days of community service, restrictive curfew, behavioral
 9 health treatment or other non-detention sanction;

10 (3) for a third technical violation of parole,
 11 the director shall not impose a sanction of more than seven
 12 days of incarceration; and

13 (4) for a fourth or subsequent technical
 14 violation of parole, the director may refer the violation to
 15 the board, which may impose incarceration for a fixed term up
 16 to thirty days, which shall be counted as time served under the
 17 sentence, or enter any other order as it sees fit; provided
 18 that the board may impose more than thirty days of
 19 incarceration if the board finds that additional detention is
 20 necessary for the parolee's rehabilitation or public safety;
 21 and provided further that the sanction shall be commensurate
 22 with the seriousness of the violation and not a punishment for
 23 the offense of conviction.

24 ~~[D.]~~ E. A ~~[prisoner]~~ parolee for whose return a
 25 warrant has been issued shall, if it is found that the warrant

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1 cannot be served, be a fugitive from justice. If it appears
2 that ~~[he]~~ the parolee has violated the provisions of ~~[his]~~ the
3 parolee's release, the board shall determine whether the time
4 from the date of the violation to the date of ~~[his]~~ the
5 parolee's arrest, or any part of it, shall be counted as time
6 served under the sentence."

7 SECTION 3. Section 31-21-15 NMSA 1978 (being Laws 1963,
8 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,
9 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended
10 to read:

11 "31-21-15. RETURN OF PROBATION VIOLATOR.--

12 A. At any time during probation:

13 (1) the court may issue a warrant for the
14 arrest of a probationer for ~~[violation of any of the conditions~~
15 ~~of release]~~ a standard violation of probation. The warrant
16 shall authorize the return of the probationer to the custody of
17 the court or to any suitable detention facility designated by
18 the court;

19 (2) the court may issue a notice to appear to
20 answer a charge of any violation and shall issue the notice for
21 a technical violation of probation unless the director
22 authorizes arrest based on a flight risk or danger to the
23 community. The notice shall be personally served upon the
24 probationer; or

25 (3) the director may arrest a probationer

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1 without warrant or may deputize any officer with power of
 2 arrest to do so by giving the officer a written statement
 3 setting forth that the probationer has, in the judgment of the
 4 director, [~~violated the conditions of the probationer's~~
 5 ~~release~~] committed a standard violation of probation. The
 6 written statement, delivered with the probationer by the
 7 arresting officer to the official in charge of a county jail or
 8 other place of detention, is sufficient warrant for the
 9 detention of the probationer. Upon the probationer's arrest
 10 and detention, the director shall immediately notify the court
 11 and submit in writing a report showing in what manner the
 12 probationer has violated the conditions of release.

13 B. Following service of a notice to appear or
 14 arrest pursuant to Subsection A of this section, the court
 15 shall then hold a hearing, which may be informal, on the
 16 violation charged. If [~~the~~] a standard violation of probation
 17 is established, the court may continue the original probation
 18 or revoke the probation and either order a new probation with
 19 any condition provided for in Section 31-20-5 or 31-20-6 NMSA
 20 1978 or require the probationer to serve the balance of the
 21 sentence imposed or any lesser sentence; provided that the
 22 sanction shall be commensurate with the seriousness of the
 23 violation and not a punishment for the offense of conviction.
 24 If a technical violation of probation is established:

25 (1) for a first technical violation of

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1 probation, the court shall not impose a sanction of more than
2 three days of community service, restrictive curfew, behavioral
3 health treatment or other non-detention sanction;

4 (2) for a second technical violation of
5 probation, the court shall not impose a sanction of more than
6 five days of community service, restrictive curfew, behavioral
7 health treatment or other non-detention sanction;

8 (3) for a third technical violation of
9 probation, the court shall not impose a sanction of more than
10 three days of incarceration; and

11 (4) for a fourth or subsequent technical
12 violation of probation, the court may continue the original
13 probation or revoke the probation and either order a new
14 probation with any condition provided for in Section 31-20-5 or
15 31-20-6 NMSA 1978 or require the probationer to serve the
16 balance of the sentence imposed or any lesser sentence;
17 provided that the sanction shall be commensurate with the
18 seriousness of the violation and not a punishment for the
19 offense of conviction.

20 C. If imposition of sentence was deferred, the
21 court may, consistent with Subsection B of this section, impose
22 any sentence that might originally have been imposed, but
23 credit shall be given for time served on probation.

24 ~~[C.]~~ D. If it is found that a warrant for the
25 return of a probationer cannot be served, the probationer is a

1 fugitive from justice. After hearing upon return, if it
2 appears that the probationer has violated the provisions of the
3 probationer's release, the court shall determine whether the
4 time from the date of violation to the date of the
5 probationer's arrest, or any part of it, shall be counted as
6 time served on probation. For the purposes of this subsection,
7 "probationer" means a person convicted of a crime by a
8 district, metropolitan, magistrate or municipal court.

9 ~~[D.]~~ E. The board shall budget funds to cover
10 expenses of returning probationers to the court. The sheriff
11 of the county in which the probationer was convicted is the
12 court's agent in the transportation of the probationer, but the
13 director, with the consent of the court, may utilize other
14 state agencies for this purpose when it is in the best interest
15 of the state."

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