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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;

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

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

F. "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

1 suspended or deferred sentence and subject to conditions;

2 G. "standard violation of probation" or "standard  
3 violation of parole" means any violation not constituting a  
4 technical violation; and

5 H. "technical violation of probation" or  
6 "technical violation of parole" means a violation of a  
7 condition of probation or parole that does not:

8 (1) create a threat to the probationer or  
9 parolee;

10 (2) create a threat to others;

11 (3) violate a condition that the probationer  
12 or parolee refrain from having contact with a victim or  
13 witness; or

14 (4) constitute a new crime."

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

17 "31-21-14. RETURN OF PAROLE VIOLATOR.--

18 A. At any time during release on parole, the board  
19 or the director may issue a warrant for the arrest of the  
20 parolee for a standard violation of parole or issue a notice  
21 to appear to answer a charge of any violation. The notice  
22 shall be served personally upon the parolee. The warrant  
23 shall authorize the warden of the institution from which the  
24 parolee was released to return the parolee to the actual  
25 custody of the institution or to any other suitable detention

1 facility designated by the board or the director. If the  
2 parolee is out of the state, the warrant shall authorize the  
3 warden to return the parolee to the state. For a technical  
4 violation of parole, the director shall issue a notice to  
5 appear served personally upon the parolee unless the director  
6 authorizes an arrest warrant based on a flight risk or danger  
7 to the community.

8 B. The director may arrest the parolee without a  
9 warrant or may deputize an officer with power of arrest to do  
10 so by giving the officer a written statement setting forth  
11 that the parolee has, in the judgment of the director,  
12 committed a standard violation of parole and the parolee  
13 presents a flight risk or danger to the community. Where an  
14 arrest is made without a warrant, the parolee shall not be  
15 returned to the institution unless authorized by the director  
16 or the board. Pending hearing as provided by law upon a  
17 charge of a standard violation of parole, the parolee  
18 presenting a flight risk or danger to the community shall  
19 remain incarcerated in the institution.

20 C. Upon arrest and detention or service of a  
21 notice to appear, the board shall cause the parolee to be  
22 promptly brought before it for a parole revocation hearing on  
23 the parole violation charged, under rules and regulations the  
24 board may adopt.

25 D. If the violation of parole is established, the

1 board may continue or revoke the parole and impose non-  
2 detention sanctions or a maximum of ninety days of  
3 incarceration or enter any other order as it sees fit;  
4 provided that the sanction shall be commensurate with the  
5 seriousness of the violation and not a punishment for the  
6 offense of conviction, and the board:

7 (1) shall not impose a sanction of more than  
8 three days of community service, restrictive curfew,  
9 behavioral health treatment or other non-detention sanction  
10 for a first technical violation of parole;

11 (2) shall not impose a sanction of more than  
12 five days of community service, restrictive curfew,  
13 behavioral health treatment or other non-detention sanction  
14 for a second technical violation of parole;

15 (3) shall not impose a sanction of more than  
16 seven days of incarceration for a third technical violation  
17 of parole; and

18 (4) may impose incarceration for a fixed  
19 term up to thirty days, which shall be counted as time served  
20 under the sentence, or enter any other order as it sees fit  
21 for a fourth or subsequent technical violation of parole;  
22 provided that the board may impose more than thirty days of  
23 incarceration if the board finds that additional detention is  
24 necessary for the parolee's rehabilitation or public safety.

25 E. A parolee for whose return a warrant has been

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

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

12 "31-21-15. RETURN OF PROBATION VIOLATOR.--

13 A. At any time during probation:

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

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

25 (3) the director may arrest a probationer

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  
4 the director, committed a standard violation of probation.  
5 The written statement, delivered with the probationer by the  
6 arresting officer to the official in charge of a county jail  
7 or other place of detention, is sufficient warrant for the  
8 detention of the probationer. Upon the probationer's arrest  
9 and detention, the director shall immediately notify the  
10 court and submit in writing a report showing in what manner  
11 the probationer has violated the conditions of release.

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

24 (1) shall not impose a sanction of more than  
25 three days of community service, restrictive curfew,

1 behavioral health treatment or other non-detention sanction  
2 for a first technical violation of probation;

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

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

10 (4) may continue the original probation or  
11 revoke the probation and either order a new probation with  
12 any condition provided for in Section 31-20-5 or 31-20-6 NMSA  
13 1978 or require the probationer to serve the balance of the  
14 sentence imposed or any lesser sentence for a fourth or  
15 subsequent technical violation of probation.

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

20 D. If it is found that a warrant for the return of  
21 a probationer cannot be served, the probationer is a fugitive  
22 from justice. After hearing upon return, if it appears that  
23 the probationer has violated the provisions of the  
24 probationer's release, the court shall determine whether the  
25 time from the date of violation to the date of the

1 probationer's arrest, or any part of it, shall be counted as  
2 time served on probation. For the purposes of this  
3 subsection, "probationer" means a person convicted of a crime  
4 by a district, metropolitan, magistrate or municipal court.

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

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