

Duplicates/Conflicts with/Companion to/Relates to: SB17; SB375

SECTION III: NARRATIVE

BILL SUMMARY

HB514 proposes to require the Corrections Department implement a system of graduated sanctions as alternatives to incarceration for described parole violations.

Section 1 imposes a new requirement that the Corrections Department (CD) develop and provide training on a system of presumptive graduated sanctions for “behavior while on probation and parole” to include technical violations, absconding, and rewards for “positive behavior and achievements.” The new system is to be presented to the Legislature by January 1, 2026, for implementation by July 1, 2026. HB514 sets forth five factors to be considered when sanctions are imposed and requires the CD to “define positive reinforcements that supervised individuals shall receive for compliance with conditions of supervision.” The presumptive sanctions “shall be exhausted” before the CD pursues return to confinement as a sanction.

Section 2 amends the definitions in the existing Probation and Parole Act (section 31-21-5) to: define "absconding" to mean willfully evading being found or failing to report to avoid supervision after “reasonable efforts to locate the person have been unsuccessful;” "screening and assessment" as a preliminary appraisal to determine if the person needs and will voluntarily accept a comprehensive evaluation, treatment, referral and other appropriate inpatient or outpatient services; technical violation" as parole or probation conditions other than arrest for a new crime, absconding, contact with the victim or a witness and; violation of a court issued order of protection; "validated risk and needs assessment instrument" as an “actuarial tool scientifically proven to determine a person's risk to reoffend and criminal risk factors that, when properly addressed, can reduce that person's likelihood of committing future criminal behavior” and; "violation response guidelines" as “objective, standardized procedures for responding to violations.”

Section 3 amends the statute authorizing the Parole Board to revoke parole (section 31-21-14) to require that, before issuing a warrant or order to appear for a parolee to consider revocation of release the Parole Board must have exhausted the graduated responses required by HB514. For a technical violation as defined in Section 1.L of HB514, the Board is limited to revocation of release (incarceration) for 15 days for the first technical violation, 30 days for the second, 90 for the third, and the remainder of the parolee’s term for the fourth or subsequent technical violation.

The Board is authorized to revoke release for longer periods if it states on the record why “additional detention is necessary for the parolee's rehabilitation or public safety.” The Board may also impose sanctions harsher than those in the graduated schedule of sanctions if the parolee is currently being supervised under a suspended, deferred or conditional discharge for a serious violent offense (section 33-2-34, paragraphs 4(a) through (n)) but “the court may only issue said harsher sanction if it finds by clear and convincing evidence that there is a direct relationship between the individual's technical violation and the underlying serious violent offense pursuant to Section 33-2-4 NMSA 1978 for which the individual is currently on supervision.”

Section 4 proposes that, as for parolees, the statute authorizing the revocation of probation (section 31-21-15) be amended to require that, before a court issues a warrant or the director directs the arrest of a probationer be arrested, the graduated responses in HB514 must have been exhausted. At the required court hearing on probation revocation, if a technical violation is found the court is limited to imposing periods of incarceration that mirror those in Section 3 of HB514 for parolees (15 days for first violation, 30 days for second, 90 days for third, and balance of sentence for fourth or subsequent technical violation). Also, as with parole revocation, the court may revoke the probationer's release for longer periods by stating on the record why additional detention is necessary for the parolee's rehabilitation or public safety and may impose sanctions harsher than those in the graduated schedule of sanctions if the probationer is currently being supervised under a suspended, deferred or conditional discharge for a serious violent offense (section 33-2-34, paragraphs 4(a) through (n)) but "the court may only issue said harsher sanction if it finds by clear and convincing evidence that there is a direct relationship between the individual's technical violation and the underlying serious violent offense pursuant to Section 33-2-4 NMSA 1978 for which the individual is currently on supervision."

FISCAL IMPLICATIONS

Some costs will be incurred for revisions to court practices and procedures will be required to incorporate the new requirements into any court hearings on revocation, as well a training costs to educate judges and staff on the new requirements.

SIGNIFICANT ISSUES

Section 3G of HB514 authorizes the Parole Board to impose harsher sanctions for a parole violations under certain circumstances. Revocation of parole is within the authority of the Parole Board, unlike revocation of probation which requires a court hearing and order (see Section 4G of HB514). The final provision of Section 3G states that "the *court* may only issue said harsher sanction if . . ." (emphasis added). Section 3 of HB514 does not otherwise mention referral of the matter to a court. Consistent with the other provisions of HB514, the intent appears to be to give the Parole Board this authority and not the court.

For those provisions that have an impact on court hearings, HB514 constrains judicial sanctions for probation "technical violations" and those involving probation for violent crimes. As a general constitutional principle, criminal sentencing is a distinct judicial responsibility. To the extent the bill would constrain or dilute that distinctive judicial responsibility, it may pose questions of its conformity to Article VI, establishing the Judicial Department, and case law interpreting and applying the New Mexico Constitution's separation of powers doctrine. The provisions that permit sanctions outside the presumptive sanctions based on findings by the court appear tailored to maintain a court's ability to make an individualized decision based on the specific facts of any violation.

HB514 is similar to other statutory changes adopted by states to restrict sanctions with the goal of improving public safety, successful performance on probation and parole, and reduced incarceration costs if incarceration is unlikely to improve public safety and parole/probation performance. The Council of State Governments Justice Center published a 50-state survey of the costs of incarceration for probation and parole violations, *Confined and*

Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets, (June 18, 2019) at: <https://csgjusticecenter.org/publications/confined-costly/>. CSG’s findings included; “On any given day, **280,000 PEOPLE** in prison—nearly **1 IN 4**—are incarcerated as a result of a supervision violation, costing states more than **\$9.3 BILLION ANNUALLY**. Technical supervision violations account for **\$2.8 BILLION** of this total amount, and new offense supervision violations make up **\$6.5 BILLION**. These figures do not account for the substantial local costs of keeping people in jail for supervision violations.” (original emphasis)

An exhaustive and well-researched (57 pages with 251 footnotes to evidence-based research) 2020 publication by the Pew Charitable Trusts provides detailed suggestions to improve probation and parole outcomes, including use of graduated sanctions to reduce costs, improve outcomes, and increase public safety:

“[R]evocations of probation and parole remain a significant contributor to prison admissions. Forty-five percent of all prison admissions nationally are for supervision violations, and almost a quarter are for technical violations. As a result, on any given day, nearly 1 in 4 people in prison—about 280,000 people nationwide—are incarcerated for a supervision violation. In 20 states, more than half of prison admissions are the result of supervision violations, and in 10 of those states technical violations drive most prison admissions. In 2015, probation revocations made up 55 percent of all prison admissions in Georgia, and parole revocations accounted for 54 percent of all prison admissions in Arkansas. These numbers do not include confinement in jail, so the overall rate of revocation-related incarceration is probably much higher; nevertheless, the reported figures are sufficiently alarming that a panel of experts recently concluded that the “largest alternative to incarceration in the United States is simultaneously one of the most significant drivers of mass incarceration.”

Research shows that incarceration is no more effective than noncustodial sanctions at reducing recidivism and can deepen illegal involvement for some people, inducing the negative behaviors it is intended to punish. One metaanalysis found that, compared with community-based alternatives, incarceration either has no impact on reducing re-arrests or actually increases criminal behavior. This finding was further supported by a study showing that using jail stays to punish supervision violations did not improve probation and parole outcomes and offered no benefits over community-based sanctions. Further evidence shows that incarceration is an inefficient method of preventing crime specifically among supervised populations.

States are already adopting policies that limit the use and duration of revocations and instead use graduated and proportional responses, such as curfews, increased reporting, and the removal of privileges to address technical violations of supervision. At least 22 states have passed laws requiring probation and parole agencies to use graduated responses, and another 16 states have enacted caps on revocation time for technical violations. This framework advances the use of proportional, evidence-based responses to violations and the development of clear, standardized definitions of technical violations. Finally, it provides appropriate responses for agencies to use when people fail to report for supervision.”

Policy Reforms Can Strengthen Community Supervision; A framework to improve probation and parole, Pew Charitable Trusts, p. 45 (footnotes 184-190 omitted), at: <https://www.pewtrusts.org/>

Under the heading “reduce use of and pathways to incarceration at pages 45-48, the Pew report recommends practices consistent with a number of provisions in HB514, including defining technical violations, and limiting arrest and incarcerations for revocations based on technical violations. Also consistent with HB514, Pew recommends (p.19) use of a validated risk and needs assessment tool administered by trained personnel. “In addition to gauging risk and needs, quality assessment tools can also identify “responsivity” factors that relate to a person’s learning style, strengths, abilities, and other attributes, which can help officers select appropriate programs and interventions. The type of assessment tool used also influences supervision success. Risk and needs assessments should be validated based on the population for which they are being used and monitored routinely to maintain reliability” Also consistent with HB514, Pew recommends (pp.26-27) use of earned compliance credits.

Consideration of the research and recommendations in this report may assist Legislators in their assessment of HB514. Additional details regarding Pew’s Justice Reinvestment Initiative focused on this subject in more than 30 states may be of interest: *To Safely Cut Incarceration, States Rethink Responses to Supervision Violations, Evidence-based policies lead to higher rates of parole and probation success*, Issue Brief (July 16, 2019) at: <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2019/07/to-safely-cut-incarceration-states-rethink-responses-to-supervision-violations>.

PERFORMANCE IMPLICATIONS

The courts are participating in performance-based budgeting. HB514 may have an impact on the measures of the district, metropolitan, and magistrate courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

ADMINISTRATIVE IMPLICATIONS

Enactment of the bill would likely require amendment of court Local Rules regarding criminal sentencing. An increase in the number and complexity of probation violation hearings would require dedication of additional court resources to the administration and enforcement of criminal sentences.

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB17 proposes changes to the consideration of parole after a person has served 30 years of a life sentence and changes to the composition of and removal provisions for members of the Parole Board. SB375 makes changes to the earning and loss of meritorious deductions by incarcerated persons and the manner of serving and duration of parole after release from confinement.

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS