

LFC Requester:

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

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SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date Feb. 24, 2025
Bill No: HB 514-280

Sponsor: Marianna Anaya
Cristina Parajon
Short Title: Probation & Parole Changes

Agency Name and Code LOPD-280
Number: _____
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 17 (administrative changes to the parole board); SB 375 (providing for early release from supervision for full compliance)

Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 514 would mandate procedures for the Probation and Parole Division of the Corrections Department to apply “graduated sanctions” for violations of release conditions, and modify parole board and judicial procedures when violations are reported to the courts for parole and probation, respectively. In this way, the bill is similar to 2021’s SB 141, and 2023’s SB 84 (the latter of which passed both houses and was vetoed by the Governor).

HB 514, Section 1 would require Corrections to shall develop and implement a system of graduated responses to be used in response to behavior while on probation and parole, including to address technical violations and absconding, to set “presumptive sanctions” based on individualized factors. The graduated sanctions *must* be exhausted before seeking formal revocation.

HB 514, Section 2 would define terms, including “technical violation,” and “absconding,” using similar terms to past legislation.

Sections 3 and 4 would amend existing statutes for the formal revocation process to apply only “after exhaustion of all appropriate graduated responses.” The bill would also specify *mandatory* penalties for technical violations *after* the graduated sanctions were exhausted, as follows:

- For a first technical violation, up to 15 days of incarceration;
- For a second, up to 30 days;
- For a third, up to 90 days; and
- For a fourth or subsequent technical violation, up to the remainder of the parolee’s sentence

The board or court may also impose *longer* sanctions than those outlined above, with findings that additional detention is necessary for the person’s rehabilitation or public safety, *or* for supervisees whose underlying conviction is for a “serious violent offense.”

The bill maintains a court’s current authority to respond to non-technical violations, including absconding (which is excluded from the definition of a “technical violation”).

FISCAL IMPLICATIONS

Parole violations are adjudicated and sanctioned by the parole board. LOPD does not represent parolees before the parole board in adjudicating violations of conditions of release, but many people are under “dual” supervision so that parole violations are often handled through the probation process instead. Only a subset of parole violations are handled exclusively through the parole board’s revocation process. LOPD is not privy to the number of parole violations processed by the board each year. However, the NM Sentencing Commission reports that in the 2022, 908 prison admissions (16.9%) were for parole violations and the average length of stay in NMCD for a parole violation was 377 days. *See* NMSC, Profile of New Mexico Prison Population, at 4 (Dec. 2022), available at <https://nmsc.unm.edu/reports/2022/confined-report-2022.pdf>. And in 2024 those numbers were 856 (15.5%) and a stay of 421 days for males and 350 days for females. *See* NMSC, Profile of New Mexico Prison Population, at 4 (Dec. 2024), <https://nmsc.unm.edu/reports/2025/profile-of-new-mexico-prison-population-fy-2024.pdf>.

Probation violations are adjudicated and sanctioned by district courts. While local “STEPS” programs handle technical violations with graduated sanctions in some judicial districts now, not every case falls within the technical violations program and many judicial districts do not have such a program in place.

LOPD represents probationers in district court when probation violations are referred to the district attorney for revocation proceedings. The available sanction for a first probation violation is the entirety of a probationer’s suspended or deferred sentence, which can vary from a few months or one year to decades of potential incarceration. With an assurance of reduced sanctions for first, second and third technical violations, the need to fully litigate those violations could potentially be reduced, if a person were willing to plead to the violation and accept the reduced sanction. If that is the case, LOPD probation revocation caseload could be somewhat reduced.

Although exact numbers are difficult to identify, significant number of New Mexico prison inmates are serving a sentence imposed for technical violations of probation or parole. As noted above, the Sentencing Commission’s December 2024 report on the NM prison population reviewed a snapshot of the 5,613 prisoners incarcerated on June 23, 2024. It identifies 856 inmates incarcerated for *parole* violations, or 15.5% of inmates. The data does not distinguish between technical and non-technical violations. *Id.* at 2. Analyst has confirmed with staff at the NM Sentencing Commission that NMCD (Corrections) does not track admissions for probation violations, as they are instead tracked as admissions for the underlying felony, so data for probation violation admissions is not available. However, analyst believes that number is at least equal to the number of parole violators.

This information is consistent with a January 2023 LFC report which tracks parole returns but not probation returns. NM LFC Report to the 56th Legislature, First Session, Vol. 1: *Legislating for Results: Policy and Performance Analysis*, 130-33, available at https://www.nmlegis.gov/Entity/LFC/Documents/Session_Publications/Budget_Recommendations/2024RecommendVol.pdf. The LFC report on NMCD performance indicates:

[R]ecidivism due to technical parole violations fell 6 percentage points [between FY21 and FY22]. Reduced recidivism aligns with the reduction in prison admissions due to parole revocations, which fell 13 percent in FY22 compared

with FY21, and went from comprising 41 percent of total admissions in FY21 to 35 percent in FY22.

Improved recidivism rates may reflect improved reentry programming, but other factors upstream in the criminal justice system, such as arrests, could also impact recidivism. Despite meeting the target for overall recidivism, the measure's rating remains yellow due to a lack of historical data with which to compare current results (see Data Quality Concerns on page 131).

Id. at 130. The report also describes “data quality concerns” which impact past evaluations of parole violation returns to prison, explaining that, during FY21, “NMCD reported its overall three-year recidivism rate had been reported incorrectly **since 2016** due to a database error that erroneously counted all intakes to the parole system as prison admissions for purposes of calculating reincarceration rates.” *Id.* at 131. It explains that NMCD has not provided corrected historical data, so all LFC reports on recidivism rates from the past 3 years are in question and it is impossible to tell whether current rates represent an increase or decrease. *Id.*

Similarly, due to an error in NMCD reporting,

several prior years' performance reports had excluded absconders when calculating recidivism rates for technical parole violations, although the measure is defined to include absconders. The department included absconders in its FY21 reports but had not informed LFC of this change. As a result, it is not possible to compare FY21's 30 percent recidivism rate for technical violations to prior years' performance, and it is not clear if this is an increase or decrease.

Id.

Despite the difficulty with hard data, the average cost to incarcerate someone in the state's prison system is about \$40.4 thousand annually. A reduced fiscal impact on NMCD is likely.

SIGNIFICANT ISSUES

Under current law, a technical probation violation is subject to full revocation and imposition of the balance of a suspended sentence, even on a first violation. Certainly, some probation/parole officers refrain from seeking revocation on a first minor violation and some judges are lenient on minor violations brought to court. Nevertheless, the statutory scheme provides no guidance discouraging full incarceration sanctions for a first technical violation.

In October 2018, the Legislative Finance Committee released a program evaluation of the Corrections Department in which it 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.

Analyst notes that HB 514 appears to adopt the technical violation sanctions scheme from SB 84 *as filed*, but which was amended before it passed both houses in 2023 and was vetoed. The SHPAC Substitute final version of that bill provided a much more limited technical violations sanction by the board or the court, ensuring **non-custodial** sanctions only for a first and second

violation. Specifically, the final version of SB 84 set technical violation sanctions as follows:

- For a first technical violation, a maximum 3 days of non-detention sanctions, including “community service, restrictive curfew, behavioral health treatment or other non-detention sanction”;
- For a second, a maximum 5 days of non-detention sanctions, employing the same language;
- For a third, a maximum 7 days of incarceration; and
- For a fourth or subsequent, the board or court “may impose incarceration for a fixed term up to thirty days, which shall be counted as time served under the sentence, or enter any other order as it sees fit.”

LOPD recommends that HB 514 follow the *final* version of SB 84 to avoid harmful custodial sanctions that can cause people to lose jobs, housing, and child custody, even if they are only incarcerated for a relatively short period of time.

Although custodial sanctions may serve purposes other than behavior change (e.g., public safety interest in addressing behavior considered to be a threat to themselves or others), current research does not support the system- and individual-level cost of relying on these sanctions as a method to promote success on supervision.

Because probation and parole are designed to enable individuals to reintegrate into society, the distinction between technical and non-technical violations is an important one. Many jurisdictions in New Mexico have adopted local rules creating graduated responses to technical violations in recognition of the distinction between struggling to comply with conditions and flagrant disregard for supervision. *See, e.g.* LR2-307; LR7-301; LR5-301. To ensure uniformity throughout the state and to prevent undue incarceration for technical violations (the stated purpose of the bill), it makes sense to codify statewide something akin to the existing local technical violation programs.

The procedures proposed by SB 514 ensure that the probation and parole officers follow graduated administrative sanctions before ever seeking formal revocation, but also limits formal revocation sanctions for technical violations – unless justified by a particular case – to more productive alternatives, such as treatment, counseling, or other supportive services. The bill specifies maximum sanctions for the first violations, moving toward progressively increasing custodial sanctions before moving toward full revocation. The board and district court also retain discretion for full revocation for non-technical violations and upon a fourth technical violation, but are not required to impose full revocation or any particular sanction even then.

Analyst notes that, unlike the local rules currently in effect in New Mexico, the graduated sanctions are all custodial. The bill could be improved by providing non-custodial sanctions for first and second violations. *See Other Substantive Issues*, below. Notably, the SHPAC-Substitute would mirror the local rule’s graduated sanctions in effect in the Second Judicial District.

PERFORMANCE IMPLICATIONS

ADMINISTRATIVE IMPLICATIONS

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

TECHNICAL ISSUES

OTHER SUBSTANTIVE ISSUES

In 2015, researchers did a rigorous evaluation of the impact of jail versus community-based sanctions, using data from over 800 violations committed by a random sample of probationers and parolees on intensive supervision probation to examine whether jail sanctions are more effective than community sanctions in 1) extending time to the offender's next violation event, 2) reducing the number of future violations, and 3) successfully completing the probation program. See Wodahl, E.J., Boman IV, J.H., Garland, B.E. (2015), *Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions?* JOURNAL OF CRIMINAL JUSTICE, 43, 242-250.

The study found no evidence to suggest that jail sanctions are any more or less effective than community-based graduated sanctions (such as increased treatment participation, electronic monitoring, and written assignments) in bringing about compliance with release conditions. The imposition of a jail sanction for noncompliance as opposed to a community-based sanction did not affect the number of days until the next violation, the number of subsequent violations, or the overall likelihood of completing supervision. Furthermore, the number of times the person went to jail, the number of days spent in jail, or the timing of the jail sanction did not influence peoples' outcomes.

Additional studies in Multnomah County, Oregon and Olympia, Washington found similar results. Rengifo, A.F. & Scott-Hayward, C.S. (2008). *Assessing the effectiveness of intermediate sanctions in Multnomah County, Oregon* (Clients who were given jail plus programs, while still more likely to recidivate than clients who did not receive any sanctions, had a lower likelihood of failure compared to the jail-only sub-sample); Drake, E. K., & Aos, S. (2012, July), *Confinement for technical violation of community supervision: Is there an effect on felony recidivism?* Washington State Institute for Public Policy (using jail as a sanction for a technical violation of the conditions of supervision does not lower recidivism for the commission of new felonies).

Although custodial sanctions may serve purposes other than behavior change (e.g., public safety interest in addressing behavior considered to be a threat to themselves or others), current research does not support the system- and individual-level cost of relying on these sanctions as a method to promote success on supervision.

Consequently, including non-custodial sanctions for first and second violations, and providing a mechanism for avoiding arrest and pre-adjudication custody for technical violations, would better effectuate the intent of the bill.

ALTERNATIVES

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

AMENDMENTS