

1 HOUSE BILL 514

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIME; AMENDING DEFINITIONS IN THE PROBATION AND  
12 PAROLE ACT; PROVIDING PROCEDURES FOR SANCTIONS FOR TECHNICAL  
13 VIOLATIONS FOR A PAROLEE WHO VIOLATES THE CONDITIONS OF RELEASE  
14 OR PROBATION; PROVIDING FOR THE DEVELOPMENT AND IMPLEMENTATION  
15 OF A GRADUATED RESPONSE SYSTEM FOR PROBATION AND PAROLE  
16 VIOLATIONS.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of Chapter 31, Article 20 NMSA  
20 1978 is enacted to read:

21 "[NEW MATERIAL] GRADUATED RESPONSES--TRAINING PROGRAM--  
22 SYSTEM PLAN REPORT.--

23 A. The corrections department shall develop and  
24 implement a system of graduated responses to be used in  
25 response to behavior while on probation and parole, including

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1 technical violations and absconding as defined in Section  
2 31-21-5 NMSA 1978 and positive behavior and achievements.

3 B. The system of graduated responses shall set  
4 forth presumptive sanctions for the most common types of  
5 supervision violations and take into account factors such as:

- 6 (1) the severity of the current violation;
- 7 (2) the supervised individual's previous  
8 criminal record;
- 9 (3) the number and severity of any previous  
10 supervision violations;
- 11 (4) the supervised individual's assessed risk  
12 level; and
- 13 (5) the extent to which graduated sanctions  
14 were imposed for previous violations.

15 C. The system shall also define positive  
16 reinforcements that supervised individuals shall receive for  
17 compliance with conditions of supervision.

18 D. The system shall clearly specify as to each type  
19 of sanction whether the supervised individual has the option to  
20 object and seek review of imposition of the sanction.

21 E. The presumptive sanctions included in the system  
22 of graduated responses shall be exhausted prior to pursuing a  
23 return for revocation pursuant to Sections 31-21-14 and  
24 31-21-15 NMSA 1978.

25 F. The corrections department shall establish and  
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1 maintain a program of initial and ongoing training for  
2 probation and parole officers on the use of graduated  
3 sanctions, including a review process as provided in Subsection  
4 D of this section.

5 G. The corrections department shall present the  
6 system plan to the legislature no later than January 1, 2026,  
7 and the system shall be implemented no later than July 1,  
8 2026."

9 SECTION 2. Section 31-21-5 NMSA 1978 (being Laws 1978,  
10 Chapter 41, Section 1, as amended) is amended to read:

11 "31-21-5. DEFINITIONS.--As used in the Probation and  
12 Parole Act:

13 A. "probation" means the procedure under which an  
14 adult defendant, found guilty of a crime upon verdict or plea,  
15 is released by the court without imprisonment under a suspended  
16 or deferred sentence and subject to conditions;

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

21 C. "institution" means the state penitentiary and  
22 any other similar state institution hereinafter created;

23 D. "board" means the parole board;

24 E. "director" means the director of the adult  
25 probation and parole division of the corrections department or

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1 any employee designated by the director;

2 F. "adult" means any person convicted of a crime by  
3 a district court;

4 G. "geriatric inmate" means a person who:

5 (1) is serving a sentence and is confined in a  
6 prison or other correctional institution under the control of  
7 the corrections department;

8 (2) is fifty-five years of age or older;

9 (3) suffers from a debilitating and chronic  
10 infirmity, illness or disease related to aging; and

11 (4) does not constitute a danger to the  
12 person's own self or to society at the time of review;

13 H. "permanently incapacitated inmate" means a  
14 person who:

15 (1) is serving a sentence and is confined in a  
16 prison or other correctional institution under the control of  
17 the corrections department;

18 (2) by reason of an existing medical condition  
19 is permanently and irreversibly physically incapacitated; and

20 (3) does not constitute a danger to the  
21 person's own self or to society at the time of review; ~~[and]~~

22 I. "terminally ill inmate" means a person who:

23 (1) is serving a sentence and is confined in a  
24 prison or other correctional institution under the control of  
25 the corrections department;

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1 (2) has an incurable condition caused by  
2 illness or disease that will, within reasonable medical  
3 judgment, produce death within six months; and

4 (3) does not constitute a danger to the  
5 person's own self or to society at the time of review;

6 J. "absconding" means when a person on supervision  
7 willfully makes the person's whereabouts unknown or fails to  
8 report for the purposes of avoiding supervision, and reasonable  
9 efforts to locate the person have been unsuccessful;

10 K. "screening and assessment" means a preliminary  
11 appraisal of a person and a determination of whether the person  
12 needs and, if so, will accept on a voluntary basis a  
13 comprehensive evaluation, treatment, referral and other  
14 appropriate services, either on an inpatient or an outpatient  
15 basis;

16 L. "technical violation" means the violation of  
17 conditions of probation or parole, other than:

18 (1) an arrest for a new crime;

19 (2) absconding;

20 (3) having contact with the victim or a  
21 witness for the case under which the individual is on  
22 supervision; and

23 (4) a violation of a permanent or temporary  
24 order of protection issued by the court pursuant to Section  
25 40-13-5 or 40-13A-5 NMSA 1978;

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1           M. "validated risk and needs assessment instrument"  
2 means an actuarial tool scientifically proven to determine a  
3 person's risk to reoffend and criminal risk factors that, when  
4 properly addressed, can reduce that person's likelihood of  
5 committing future criminal behavior; and

6           N. "violation response guidelines" mean objective,  
7 standardized procedures for responding to violations."

8           SECTION 3. Section 31-21-14 NMSA 1978 (being Laws 1955,  
9 Chapter 232, Section 17, as amended) is amended to read:

10           "31-21-14. RETURN OF PAROLE VIOLATOR.--

11           A. At any time during release on parole, and after  
12 exhaustion of all appropriate graduated responses pursuant to  
13 Section 1 of this 2025 act, the board or the director may issue  
14 a warrant for the arrest of the released [~~prisoner~~] parolee for  
15 violation of any of the conditions of release or issue a notice  
16 to appear to answer a charge of violation. The notice shall be  
17 served personally upon the [~~prisoner~~] parolee. The warrant  
18 shall authorize the [~~superintendent~~] warden of the institution  
19 from which the [~~prisoner~~] parolee was released to return the  
20 prisoner to the actual custody of the institution or to any  
21 other suitable detention facility designated by the board or  
22 the director. If the [~~prisoner~~] parolee is out of the state,  
23 the warrant shall authorize the [~~superintendent~~] warden to  
24 return [~~him~~] the parolee to the state.

25           B. If graduated responses have been exhausted, the

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1 director may arrest the [~~prisoner~~] parolee without a warrant or  
2 may deputize [~~any~~] an officer with power of arrest to do so by  
3 giving [~~him~~] the officer a written statement setting forth that  
4 the [~~prisoner~~] parolee has, in the judgment of the director,  
5 violated the conditions of [~~his~~] the parolee's release. Where  
6 an arrest is made without a warrant, the [~~prisoner~~] parolee  
7 shall not be returned to the institution unless authorized by  
8 the director or the board. Pending hearing as provided by law  
9 upon any charge of violation, the [~~prisoner~~] parolee shall  
10 remain incarcerated in the institution.

11 C. Upon arrest and detention, or service of a  
12 notice to appear, the board shall cause the [~~prisoner~~] parolee  
13 to be promptly brought before it for a parole revocation  
14 hearing on the parole violation charged, under rules [~~and~~  
15 ~~regulations~~] the board may adopt. If violation is established,  
16 the board may continue or revoke the parole or enter any other  
17 order as it sees fit.

18 D. For a violation that constitutes a technical  
19 violation, the board shall:

20 (1) for the first technical violation,  
21 temporarily revoke supervision and impose a period of  
22 incarceration of up to fifteen days;

23 (2) for the second technical violation,  
24 temporarily revoke supervision and impose a period of  
25 incarceration of up to thirty days;

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1                   (3) for the third technical violation,  
2                   temporarily revoke supervision and impose a period of  
3                   incarceration of up to ninety days; and

4                   (4) for the fourth and subsequent technical  
5                   violations, revoke supervision and impose a period of  
6                   incarceration not to exceed the remainder of the parolee's  
7                   sentence.

8                   E. The board may impose a period of incarceration  
9                   beyond the periods outlined in Subsection D of this section if  
10                   the board finds that additional detention is necessary for the  
11                   parolee's rehabilitation or public safety and the board  
12                   describes, on the record, the basis for the extended period of  
13                   incarceration.

14                   ~~[D.]~~ F. A [prisoner] parolee for whose return a  
15                   warrant has been issued shall, if it is found that the warrant  
16                   cannot be served, be a fugitive from justice. If it appears  
17                   that ~~[he]~~ the parolee has violated the provisions of ~~[his]~~ the  
18                   parolee's release, the board shall determine whether the time  
19                   from the date of the violation to the date of ~~[his]~~ the  
20                   parolee's arrest, or any part of it, shall be counted as time  
21                   served under the sentence.

22                   G. The board may issue sanctions for technical  
23                   violations that are harsher than those in the graduated  
24                   schedule of sanctions for an individual currently serving a  
25                   period of supervision under a suspended, deferred or

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1 conditional discharge from a plea or conviction that includes a  
2 serious violent offense as enumerated in Subparagraphs (a)  
3 through (n) of Paragraph (4) of Subsection L of Section 33-2-34  
4 NMSA 1978; provided, however, that the court may only issue  
5 said harsher sanction if it finds by clear and convincing  
6 evidence that there is a direct relationship between the  
7 individual's technical violation and the underlying serious  
8 violent offense pursuant to Section 33-2-4 NMSA 1978 for which  
9 the individual is currently on supervision."

10 SECTION 4. Section 31-21-15 NMSA 1978 (being Laws 1963,  
11 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,  
12 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended  
13 to read:

14 "31-21-15. RETURN OF PROBATION VIOLATOR.--

15 A. At any time during probation, and after the  
16 exhaustion of graduated responses pursuant to Section 1 of this  
17 2025 act:

18 (1) the court may issue a warrant for the  
19 arrest of a probationer for violation of any of the conditions  
20 of release. The warrant shall authorize the return of the  
21 probationer to the custody of the court or to any suitable  
22 detention facility designated by the court;

23 (2) the court may issue a notice to appear to  
24 answer a charge of violation. The notice shall be personally  
25 served upon the probationer; or

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1 (3) the director may arrest a probationer  
2 without warrant or may deputize any officer with power of  
3 arrest to do so by giving the officer a written statement  
4 setting forth that the probationer has, in the judgment of the  
5 director, violated the conditions of the probationer's release.  
6 The 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. The court shall then hold a hearing, which may  
14 be informal, on the violation charged. If the violation is  
15 established, the court may:

16 (1) continue the original probation; [~~or~~]  
17 (2) revoke the probation and either order a  
18 new probation with any condition provided for in Section  
19 31-20-5 or 31-20-6 NMSA 1978 or require the probationer to  
20 serve the balance of the sentence imposed or any lesser  
21 sentence; or

22 (3) temporarily revoke probation for a  
23 technical violation and impose a fixed period of incarceration  
24 pursuant to Subsection D of this section.

25 C. If imposition of sentence was deferred, the

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1 court may impose any sentence that might originally have been  
2 imposed, but credit shall be given for time served on  
3 probation.

4 D. For a violation that constitutes a technical  
5 violation, the court shall:

6 (1) for the first technical violation,  
7 temporarily revoke supervision and impose a period of  
8 incarceration for up to fifteen days;

9 (2) for the second technical violation,  
10 temporarily revoke supervision and impose a period of  
11 incarceration for up to thirty days;

12 (3) for a third technical violation,  
13 temporarily revoke supervision and impose a period of  
14 incarceration of up to ninety days; and

15 (4) for the fourth and subsequent technical  
16 violation, revoke supervision and impose a period of  
17 incarceration not to exceed the length of the original sentence  
18 imposed prior to the suspension in lieu of probation.

19 E. The court may impose a period of incarceration  
20 beyond the periods outlined in Subsection D of this section if  
21 the court finds that the additional detention is necessary for  
22 the probationer's rehabilitation or public safety and the court  
23 describes, on record, the basis for the extended period of  
24 incarceration.

25 [~~E.~~] F. If it is found that a warrant for the

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1 return of a probationer cannot be served, the probationer is a  
2 fugitive from justice. After hearing upon return, if it  
3 appears that the probationer has violated the provisions of the  
4 probationer's release, the court shall determine whether the  
5 time from the date of violation to the date of the  
6 probationer's arrest, or any part of it, shall be counted as  
7 time served on probation. For the purposes of this subsection,  
8 "probationer" means a person convicted of a crime by a  
9 district, metropolitan, magistrate or municipal court.

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

17 H. The court may issue sanctions for technical  
18 violations that are harsher than those in the graduated  
19 schedule of sanctions for an individual currently serving a  
20 period of supervision under a suspended, deferred or  
21 conditional discharge from a plea or conviction that includes a  
22 serious violent offense as enumerated in Subparagraphs (a)  
23 through (n) of Paragraph (4) of Subsection L of Section 33-2-34  
24 NMSA 1978; provided, however, that the court may only issue a  
25 harsher sanction if the court finds by clear and convincing

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1 evidence that there is a direct relationship between the  
2 person's technical violation and the underlying serious violent  
3 offense for which the person is currently on supervision."

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