

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 296

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO CRIMINAL SENTENCING; DEFINING "PROBATIONER" FOR THE
PURPOSES OF THE STATUTE GOVERNING RETURN OF A PROBATION
VIOLATOR; DECLARING AN EMERGENCY.

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

SECTION 1. Section 31-21-15 NMSA 1978 (being Laws 1963,
Chapter 301, Section 13, as amended) is amended to read:

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

A. At any time during probation:

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

(2) the court may issue a notice to appear to

1 answer a charge of violation. The notice shall be personally
2 served upon the probationer; or

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

15 B. The court shall then hold a hearing, which may
16 be informal, on the violation charged. If the violation is
17 established, the court may continue the original probation or
18 revoke the probation and either order a new probation with any
19 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978
20 or require the probationer to serve the balance of the sentence
21 imposed or any lesser sentence. If imposition of sentence was
22 deferred, the court may impose any sentence [~~which~~] that might
23 originally have been imposed, but credit shall be given for
24 time served on probation.

25 C. If it is found that a warrant for the return of

1 a probationer cannot be served, the probationer is a fugitive
2 from justice. After hearing upon return, if it appears that
3 ~~[he]~~ the probationer has violated the provisions of ~~[his]~~ the
4 probationer's release, the court shall determine whether the
5 time from the date of violation to the date of ~~[his]~~ 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. The board shall budget funds to cover expenses
11 of returning probationers to the court. The sheriff of the
12 county in which the probationer was convicted is the court's
13 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 SECTION 2. EMERGENCY.--It is necessary for the public
18 peace, health and safety that this act take effect immediately.