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

(3) the director may arrest a probationer without warrant or may deputize any officer with power of arrest to do so by giving the officer a written statement setting forth that the probationer has, in the judgment of the director, violated the conditions of the probationer's release. The written statement, delivered with the probationer by the arresting officer to the official in

1 charge of a county jail or other place of detention, is
2 sufficient warrant for the detention of the probationer.
3 Upon the probationer's arrest and detention, the director
4 shall immediately notify the court and submit in writing a
5 report showing in what manner the probationer has violated
6 the conditions of release.

7 B. The court shall then hold a hearing, which may
8 be informal, on the violation charged. If the violation is
9 established, the court may continue the original probation or
10 revoke the probation and either order a new probation with
11 any condition provided for in Section 31-20-5 or 31-20-6 NMSA
12 1978 or require the probationer to serve the balance of the
13 sentence imposed or any lesser sentence. If imposition of
14 sentence was deferred, the court may impose any sentence that
15 might originally have been imposed, but credit shall be given
16 for time served on probation.

17 C. If it is found that a warrant for the return of
18 a probationer cannot be served, the probationer is a fugitive
19 from justice. After hearing upon return, if it appears that
20 the probationer has violated the provisions of the
21 probationer's release, the court shall determine whether the
22 time from the date of violation to the date of the
23 probationer's arrest, or any part of it, shall be counted as
24 time served on probation. For the purposes of this
25 subsection, "probationer" means a person convicted of a crime

1 by a district, metropolitan, magistrate or municipal court.

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

9 SECTION 2. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect
11 immediately. _____

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