

1 SENATE BILL  
2 56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023  
3 INTRODUCED BY  
4 Bill B. O'Neill  
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10 AN ACT

11 RELATING TO CRIMINAL JUSTICE; LIMITING INCARCERATION FOR  
12 TECHNICAL VIOLATIONS OF PROBATION AND PAROLE; ALPHABETIZING  
13 DEFINITIONS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

18 "31-21-5. DEFINITIONS.--As used in the Probation and  
19 Parole Act:

20 A. "adult" means a person convicted of a crime by a  
21 district court;

22 B. "board" means the parole board;

23 C. "director" means the director of the adult  
24 probation and parole division of the corrections department or  
25 any employee designated by the director;

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1           D. "institution" means the state penitentiary and  
2 any other similar state institution hereinafter created;

3           E. "parole" means the release to the community of  
4 an inmate of an institution by decision of the board or by  
5 operation of law, subject to conditions imposed by the board  
6 and to its supervision;

7           [A.] F. "probation" means the procedure under which  
8 an adult defendant, found guilty of a crime upon verdict or  
9 plea, is released by the court without imprisonment under a  
10 suspended or deferred sentence and subject to conditions; and

11           ~~[B. "parole" means the release to the community of~~  
12 ~~an inmate of an institution by decision of the board or by~~  
13 ~~operation of law, subject to conditions imposed by the board~~  
14 ~~and to its supervision;~~

15           ~~G. "institution" means the state penitentiary and~~  
16 ~~any other similar state institution hereinafter created;~~

17           ~~D. "board" means the parole board;~~

18           ~~E. "director" means the director of the field~~  
19 ~~services division of the corrections department or any employee~~  
20 ~~designated by him; and~~

21           ~~F. "adult" means any person convicted of a crime by~~  
22 ~~a district court]~~

23           G. "technical probation violation" or "technical  
24 parole violation" means a violation of a condition of probation  
25 or parole that does not either create a threat to the

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1 probationer or released prisoner or others or does not  
2 constitute a new criminal charge."

3 SECTION 2. Section 31-21-14 NMSA 1978 (being Laws 1955,  
4 Chapter 232, Section 17, as amended) is amended to read:

5 "31-21-14. RETURN OF PAROLE VIOLATOR.--

6 A. At any time during release on parole, the board  
7 or the director may issue a warrant for the arrest of the  
8 released prisoner for violation of any of the conditions of  
9 release or issue a notice to appear to answer a charge of  
10 violation. The notice shall be served personally upon the  
11 prisoner. The warrant shall authorize the [~~superintendent~~]  
12 warden of the institution from which the prisoner was released  
13 to return the prisoner to the actual custody of the institution  
14 or to any other suitable detention facility designated by the  
15 board or the director. If the prisoner is out of the state,  
16 the warrant shall authorize the [~~superintendent~~] warden to  
17 return [~~him~~] the prisoner to the state.

18 B. The director may arrest the prisoner without a  
19 warrant or may deputize [~~any~~] an officer with power of arrest  
20 to do so by giving [~~him~~] the officer a written statement  
21 setting forth that the prisoner has, in the judgment of the  
22 director, violated the conditions of [~~his~~] the prisoner's  
23 release. Where an arrest is made without a warrant, the  
24 prisoner shall not be returned to the institution unless  
25 authorized by the director or the board. Pending hearing as

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1 provided by law upon any charge of violation, the prisoner  
2 shall remain incarcerated in the institution.

3 C. Upon arrest and detention, the board shall cause  
4 the prisoner to be promptly brought before it for a parole  
5 revocation hearing on the parole violation charged, under rules  
6 and regulations the board may adopt.

7 D. If a parole violation is established, the board  
8 may continue or revoke the parole or enter any other order as  
9 it sees fit; provided that for a technical parole violation,  
10 the board:

11 (1) shall not impose a sentence of more than a  
12 fifteen-day term of incarceration for a first technical parole  
13 violation;

14 (2) shall not impose a sentence of more than a  
15 thirty-day term of incarceration for a second technical parole  
16 violation;

17 (3) shall not impose a sentence of more than a  
18 forty-five-day term of incarceration for a third technical  
19 parole violation; and

20 (4) may revoke the parole or enter any other  
21 order as it sees fit for a fourth or subsequent technical  
22 parole violation.

23 [~~D.~~] E. A prisoner for whose return a warrant has  
24 been issued shall, if it is found that the warrant cannot be  
25 served, be a fugitive from justice. If it appears that [~~he~~]

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1 the prisoner has violated the provisions of [~~his~~] the  
2 prisoner's release, the board shall determine whether the time  
3 from the date of the violation to the date of [~~his~~] the  
4 prisoner's arrest, or any part of it, shall be counted as time  
5 served under the sentence."

6 SECTION 3. Section 31-21-15 NMSA 1978 (being Laws 1963,  
7 Chapter 301, Section 13, as amended by Laws 2016, Chapter 27,  
8 Section 1 and by Laws 2016, Chapter 31, Section 1) is amended  
9 to read:

10 "31-21-15. RETURN OF PROBATION VIOLATOR.--

11 A. At any time during probation:

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

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

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

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1     arresting officer to the official in charge of a county jail or  
2     other place of detention, is sufficient warrant for the  
3     detention of the probationer. Upon the probationer's arrest  
4     and detention, the director shall immediately notify the court  
5     and submit in writing a report showing in what manner the  
6     probationer has violated 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 any  
11    condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978  
12    or require the probationer to serve the balance of the sentence  
13    imposed or any lesser sentence; provided that:

14                   (1) for a first technical probation violation,  
15    the court shall not impose a sentence of more than a fifteen-  
16    day term of incarceration;

17                   (2) for a second technical probation  
18    violation, the court shall not impose a sentence of more than a  
19    thirty-day term of incarceration;

20                   (3) for a third technical probation violation,  
21    the court shall not impose a sentence of more than a forty-  
22    five-day term of incarceration;

23                   (4) for a fourth or subsequent technical  
24    probation violation, the court may continue the original  
25    probation or revoke the probation and either order a new

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1 probation with any condition provided for in Section 31-20-5 or  
2 31-20-6 NMSA 1978 or require the probationer to serve the  
3 balance of the sentence imposed or any lesser sentence; or

4 (5) if imposition of sentence was deferred,  
5 the court may impose any sentence that might originally have  
6 been imposed, but credit shall be given for time served on  
7 probation.

8 C. If it is found that a warrant for the return of  
9 a probationer cannot be served, the probationer is a fugitive  
10 from justice. After hearing upon return, if it appears that  
11 the probationer has violated the provisions of the  
12 probationer's release, the court shall determine whether the  
13 time from the date of violation to the date of the  
14 probationer's arrest, or any part of it, shall be counted as  
15 time served on probation. For the purposes of this subsection,  
16 "probationer" means a person convicted of a crime by a  
17 district, metropolitan, magistrate or municipal court.

18 D. The board shall budget funds to cover expenses  
19 of returning probationers to the court. The sheriff of the  
20 county in which the probationer was convicted is the court's  
21 agent in the transportation of the probationer, but the  
22 director, with the consent of the court, may utilize other  
23 state agencies for this purpose when it is in the best interest  
24 of the state."