

1 SENATE BILL 39

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Bill B. O'Neill and Antonio Maestas and Gail Chasey

5
6
7
8 FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

9
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 31-20-5 NMSA 1978 (being Laws 1963,
17 Chapter 303, Section 29-17, as amended) is amended to read:

18 "31-20-5. PLACING DEFENDANT ON PROBATION.--

19 A. When a person has been convicted of a crime for
20 which a sentence of imprisonment is authorized and when the
21 magistrate, metropolitan or district court has deferred or
22 suspended sentence, it shall order the defendant to be placed
23 on probation for all or some portion of the period of deferment
24 or suspension if the defendant is in need of supervision,
25 guidance or direction that is feasible for the corrections

.226879.3

underscoring material = new
[bracketed material] = delete

1 department to furnish. Except for sex offenders as provided in
2 Section 31-20-5.2 NMSA 1978, the total period of probation for
3 district court shall not exceed five years and the total period
4 of probation for the magistrate or metropolitan courts shall be
5 no longer than the maximum allowable incarceration time for the
6 offense or as otherwise provided by law.

7 B. The court may designate specific and particular
8 conditions as conditions that warrant a standard violation
9 pursuant to Subsection B of Section 31-21-15 NMSA 1978 for a
10 defendant serving a period of probation under a suspended,
11 deferred or conditional discharge from a plea or conviction
12 that includes either a sex offense as defined in Section
13 29-11A-3 NMSA 1978 or a serious violent offense as enumerated
14 in Subparagraphs (a) through (n) of Paragraph (4) of Subsection
15 L of Section 33-2-34 NMSA 1978. The court may only order that
16 violating these conditions constitutes a standard violation if
17 it finds by clear and convincing evidence these additional
18 conditions are necessary to ensure public safety or the safety
19 of a particular individual.

20 ~~[B.]~~ C. If a defendant is required to serve a
21 period of probation subsequent to a period of incarceration:

22 (1) the period of probation shall be served
23 subsequent to any required period of parole, with the time
24 served on parole credited as time served on the period of
25 probation and the conditions of probation imposed by the court

.226879.3

underscored material = new
[bracketed material] = delete

1 deemed as additional conditions of parole; and

2 (2) in the event that the defendant violates
3 any condition of that parole, the parole board shall cause
4 ~~[him]~~ the defendant to be brought before it pursuant to the
5 provisions of Section 31-21-14 NMSA 1978 and may make any
6 disposition authorized pursuant to that section and, if parole
7 is revoked, the period of parole served in the custody of a
8 correctional facility shall not be credited as time served on
9 probation."

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

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

14 A. "absconding" means that a person under
15 supervision willfully makes the person's whereabouts unknown or
16 willfully fails to report as ordered with a purpose to evade
17 compliance with the person's supervision obligations by making
18 the person's self unavailable for supervision, which may be
19 inferred from surrounding circumstances, and when a person's
20 failure to appear without notice for three or more consecutive
21 supervision appointments of which the person had actual notice,
22 shall provide a rebuttable presumption of that purpose;

23 B. "adult" means a person convicted of a crime by a
24 district court;

25 C. "board" means the parole board;

.226879.3

underscored material = new
[bracketed material] = delete

1 D. "director" means the director of the adult
2 probation and parole division of the corrections department or
3 any employee designated by the director;

4 E. "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 F. "institution" means the state penitentiary and
14 any other similar state institution hereinafter created;

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

19 H. "permanently incapacitated inmate" means a
20 person who:

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

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

underscored material = new
[bracketed material] = delete

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

3 ~~[A.] I. "probation" means the procedure under which~~
4 ~~an adult defendant, found guilty of a crime upon verdict or~~
5 ~~plea, is released by the court without imprisonment under a~~
6 ~~suspended or deferred sentence and subject to conditions;~~

7 ~~[B. "parole" means the release to the community of~~
8 ~~an inmate of an institution by decision of the board or by~~
9 ~~operation of law, subject to conditions imposed by the board~~
10 ~~and to its supervision;~~

11 ~~C. "institution" means the state penitentiary and~~
12 ~~any other similar state institution hereinafter created;~~

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

14 ~~E. "director" means the director of the adult~~
15 ~~probation and parole division of the corrections department or~~
16 ~~any employee designated by the director;~~

17 ~~F. "adult" means any person convicted of a crime by~~
18 ~~a district court;~~

19 ~~G. "geriatric inmate" means a person who:~~

20 ~~(1) is serving a sentence and is confined in a~~
21 ~~prison or other correctional institution under the control of~~
22 ~~the corrections department;~~

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

24 ~~(3) suffers from a debilitating and chronic~~
25 ~~infirmity, illness or disease related to aging; and~~

.226879.3

underscored material = new
[bracketed material] = delete

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

3 H. ~~"permanently incapacitated inmate" means a~~
4 ~~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) by reason of an existing medical condition~~
9 ~~is permanently and irreversibly physically incapacitated; and~~

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

12 J. "standard violation of probation" or "standard
13 violation of parole" means any violation:

14 (1) that violates a condition that the
15 probationer or parolee refrain from having contact with a
16 victim or witness;

17 (2) that constitutes absconding;

18 (3) that constitutes a new crime not
19 constituting a technical violation; or

20 (4) for a sex offender or serious violent
21 offender pursuant to Subsection C of Section 31-20-5 NMSA 1978,
22 any contact with the victim or any violation of a condition
23 designated by the sentencing court as a standard violation;

24 K. "technical violation of probation" or "technical
25 violation of parole" means any willful violation of conditions

underscored material = new
[bracketed material] = delete

1 of probation or parole supervision that is not a standard
2 violation, including a positive chemical test for alcohol or
3 controlled substance consumption or missing a scheduled
4 supervision appointment; and

5 [~~F.~~] L. "terminally ill inmate" means a person who:
6 (1) is serving a sentence and is confined in a
7 prison or other correctional institution under the control of
8 the corrections department;
9 (2) has an incurable condition caused by
10 illness or disease that will, within reasonable medical
11 judgment, produce death within six months; and
12 (3) does not constitute a danger to the
13 person's own self or to society at the time of review."

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

16 "31-21-14. RETURN OF PAROLE VIOLATOR.--

17 A. At any time during release on parole, the board
18 or the director may issue a warrant for the arrest of the
19 [~~released prisoner~~] parolee for [~~violation of any of the~~
20 ~~conditions of release~~] a standard violation of parole or issue
21 a notice to appear to answer a charge of any violation. The
22 notice shall be served personally upon the [~~prisoner~~] parolee.
23 The warrant shall authorize the [~~superintendent~~] warden of the
24 institution from which the [~~prisoner~~] parolee was released to
25 return the [~~prisoner~~] parolee to the actual custody of the

underscored material = new
[bracketed material] = delete

1 institution or to any other suitable detention facility
2 designated by the board or the director. If the [~~prisoner~~]
3 parolee is out of the state, the warrant shall authorize the
4 [~~superintendent~~] warden to return [~~him~~] the parolee to the
5 state. For a technical violation of parole, the director shall
6 issue a notice to appear served personally upon the parolee
7 unless the director authorizes an arrest warrant based on a
8 flight risk or danger to the community.

9 B. The director may arrest the [~~prisoner~~] parolee
10 without a warrant or may deputize [~~any~~] an officer with power
11 of arrest to do so by giving [~~him~~] the officer a written
12 statement setting forth that the [~~prisoner~~] parolee has, in the
13 judgment of the director, [~~violated the conditions of his~~
14 ~~release~~] committed a standard violation of parole and the
15 parolee presents a flight risk or danger to the community.

16 Where an arrest is made without a warrant, the [~~prisoner~~]
17 parolee shall not be returned to the institution unless
18 authorized by the director or the board. Pending hearing as
19 provided by law upon [~~any~~] a charge of a standard violation of
20 parole, the [~~prisoner~~] parolee presenting a flight risk or
21 danger to the community shall remain incarcerated in the
22 institution.

23 C. Upon arrest and detention or service of a notice
24 to appear, the board shall cause the [~~prisoner~~] parolee to be
25 promptly brought before it for a parole revocation hearing on

.226879.3

underscored material = new
[bracketed material] = delete

1 the parole violation charged, under rules and regulations the
2 board may adopt.

3 D. If a standard violation of parole is
4 established, the board may continue or revoke the parole,
5 impose detention for a fixed term up to ninety days, which
6 shall be counted as time served under the sentence, or enter
7 any other order as it sees fit.

8 E. Except as provided in Subsection F of this
9 section, if a technical violation of parole is established
10 before the board at a technical violation hearing, the board:

11 (1) shall not impose a sanction of more than
12 three days of community service, restrictive curfew, behavioral
13 health treatment or other non-detention sanction for a first
14 technical violation of parole;

15 (2) shall not impose a sanction of more than
16 five days of community service, restrictive curfew, behavioral
17 health treatment or other non-detention sanction for a second
18 technical violation of parole;

19 (3) shall not impose a sanction of more than
20 seven days of incarceration for a third technical violation of
21 parole; and

22 (4) may impose incarceration for a fixed term
23 up to thirty days, which shall be counted as time served under
24 the sentence, or enter any other order as it sees fit for a
25 fourth or subsequent technical violation of parole.

.226879.3

underscored material = new
[bracketed material] = delete

1 F. The board may impose incarceration beyond the
2 terms outlined in Subsection E of this section if the board
3 finds that additional detention is necessary for the parolee's
4 rehabilitation or public safety.

5 [~~D.~~] G. A [~~prisoner~~] parolee for whose return a
6 warrant has been issued shall, if it is found that the warrant
7 cannot be served, be a fugitive from justice. If it appears
8 that [~~he~~] the parolee has violated the provisions of [~~his~~] the
9 parolee's release, the board shall determine whether the time
10 from the date of the violation to the date of [~~his~~] the
11 parolee's arrest, or any part of it, shall be counted as time
12 served under the sentence."

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

17 "31-21-15. RETURN OF PROBATION VIOLATOR.--

18 A. At any time during probation:

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

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

underscoring material = new
[bracketed material] = delete

1 answer a charge of any violation and shall issue the notice for
2 a technical violation of probation unless the court issues an
3 arrest warrant based on a flight risk or danger to the
4 community. The notice shall be personally served upon the
5 probationer; or

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

19 B. Following service of a notice to appear or
20 arrest pursuant to Subsection A of this section, the court
21 shall then hold a hearing, which may be informal, on the
22 violation charged. If [~~the~~] a standard violation of probation
23 is established, the court may continue the original probation
24 or revoke the probation and either order a new probation with
25 any condition provided for in Section 31-20-5 or 31-20-6 NMSA

.226879.3

underscoring material = new
[bracketed material] = delete

1 1978 or require the probationer to serve the balance of the
2 sentence imposed or any lesser sentence; provided that, except
3 as provided in Subsection C of this section, the court:

4 (1) shall not impose a sanction of more than
5 three days of community service, restrictive curfew, behavioral
6 health treatment or other non-detention sanction for a first
7 technical violation of probation;

8 (2) shall not impose a sanction of more than
9 five days of community service, restrictive curfew, behavioral
10 health treatment or other non-detention sanction for a second
11 technical violation of probation;

12 (3) shall not impose a sanction of more than
13 three days of incarceration for a third technical violation of
14 probation; and

15 (4) may continue the original probation or
16 revoke the probation and either order a new probation with any
17 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978
18 or require the probationer to serve the balance of the sentence
19 imposed or any lesser sentence for a fourth or subsequent
20 technical violation of probation.

21 C. The court may impose incarceration beyond the
22 terms outlined in Subsection B of this section if the court
23 finds that additional detention is necessary for the
24 probationer's rehabilitation or public safety.

25 D. If imposition of sentence was deferred, the

underscoring material = new
~~[bracketed material] = delete~~

1 court may, consistent with Subsection B of this section, impose
2 any sentence that might originally have been imposed, but
3 credit shall be given for time served on probation.

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

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