

1 HOUSE BILL 263

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING CLARIFICATION
12 AND GUIDANCE FOR PROBATION AND PAROLE; ALLOWING FOR A PERSON ON
13 PROBATION TO HAVE THE TIME REQUIRED FOR SUPERVISED PROBATION TO
14 BE CONVERTED TO NON-REPORTING SUPERVISED PROBATION FOR GOOD
15 BEHAVIOR; REPEALING SECTION 31-21-25.1 NMSA 1978 (BEING LAWS
16 1994, CHAPTER 21, SECTION 3).

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

19 SECTION 1. Section 31-20-5 NMSA 1978 (being Laws 1963,
20 Chapter 303, Section 29-17, as amended) is amended to read:

21 "31-20-5. PLACING DEFENDANT ON PROBATION.--

22 A. The purpose of probation is to enforce victim
23 restitution, hold a person accountable for the person's
24 criminal conduct, promote a person's reintegration into law-
25 abiding society and reduce the risks that the person will

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1 commit new offenses. When a person has been convicted of a
2 crime for which a sentence of imprisonment is authorized and
3 when the [~~magistrate, metropolitan or district~~] court has
4 [~~deferred or suspended sentence, it~~] entered an order of
5 conditional discharge pursuant to Section 31-20-13 or 30-31-28
6 NMSA 1978, entered an order deferring the sentence or entered
7 an order suspending in part or in full the sentence, the court
8 shall order the defendant to be placed on probation for all or
9 some portion of the period of the conditional discharge,
10 deferment or suspension if the defendant is in need of
11 supervision, guidance or direction that is feasible for the
12 corrections department to furnish.

13 B. Except for sex offenders as provided in Section
14 31-20-5.2 NMSA 1978, the total period of probation for district
15 court shall not exceed five years and the total period of
16 probation for the magistrate or metropolitan courts shall be no
17 longer than the maximum allowable incarceration time for the
18 offense [~~or as~~] at the time of sentencing unless otherwise
19 provided by law.

20 C. The court shall consult a validated risk and
21 needs assessment, if provided by the corrections department,
22 when deciding what conditions of probation to impose.

23 [~~B.~~] D. If a defendant is required to serve a
24 period of probation subsequent to a period of incarceration:

25 (1) the period of probation shall be served

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1 subsequent to any required period of parole, with the time
2 served on parole credited as time served on the period of
3 probation and the conditions of probation imposed by the court
4 deemed as additional conditions of parole; and

5 (2) ~~[in the event that]~~ if the defendant
6 violates any condition of that parole and the violation is not
7 sanctioned pursuant to the provisions of Section 9 of this 2020
8 act, the parole board shall cause ~~[him]~~ the defendant to be
9 brought before it pursuant to the provisions of Section
10 31-21-14 NMSA 1978 and may make any disposition authorized
11 pursuant to that section and, if parole is revoked, the period
12 of parole served in the custody of a correctional facility
13 shall not be credited as time served on probation.

14 E. A person, except a person serving a period of
15 probation under a suspended, deferred or conditional discharge
16 stemming from a plea or conviction that includes any sex
17 offense enumerated in Subsection I of Section 29-11A-3 NMSA
18 1978, a serious violent offense as enumerated in Paragraph (4)
19 of Subsection L of Section 33-2-34 NMSA 1978 or a human
20 trafficking offense as enumerated in Section 30-52-1 NMSA 1978,
21 who has been placed on supervised probation for more than one
22 year, has completed one year on supervised probation and has
23 complied with all conditions imposed by the court's judgment
24 and order of probation, including paying all court-ordered
25 restitution, fines and fees, shall be eligible for a conversion

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1 from supervised probation to unsupervised probation as provided
2 in this section. For every thirty days completed on supervised
3 probation without a violation of probation, thirty days of the
4 supervised probation term shall be converted to an unsupervised
5 probation term. All supervised probation must be completed
6 before an unsupervised probation period begins. If a
7 probationer violates the conditions of probation at any time
8 during the probationary period, the court shall have the same
9 authority provided by Section 31-21-15 NMSA 1978 over any
10 converted unsupervised probation."

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

13 "31-21-4. CONSTRUCTION AND PURPOSE OF ACT.--

14 A. The Probation and Parole Act shall be liberally
15 construed to the end that the treatment of persons convicted of
16 crime shall take into consideration their individual
17 characteristics, circumstances [~~needs and potentialities as~~
18 ~~revealed by case study~~] and assessment of risk and needs and
19 that such persons shall be dealt with in the community by a
20 uniformly organized system of constructive rehabilitation under
21 probation supervision instead of in an institution or under
22 parole supervision when a period of institutional treatment is
23 deemed essential in the light of the needs of public safety and
24 their own welfare.

25 B. The corrections department shall:

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1 (1) operate probation and parole supervision
2 based upon application of a validated risk and needs assessment
3 and principles of effective intervention to reduce criminogenic
4 risk and needs factors;

5 (2) focus supervision resources on the initial
6 period of release or placement on probation;

7 (3) recommend and enforce conditions that
8 include cognitive-behavioral programming to address criminal
9 thinking and address basic needs and transitional requirements,
10 such as housing, employment, medical and mental health services
11 and transportation; and

12 (4) apply a consistent system of incentives
13 and graduated sanctions to promptly respond to positive and
14 negative behavior by probationers and parolees under
15 supervision."

16 SECTION 3. 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. "probation" means the procedure under which an~~
21 ~~adult defendant, found guilty of a crime upon verdict or plea,~~
22 ~~is released by the court without imprisonment under a suspended~~
23 ~~or deferred sentence and subject to conditions;~~

24 ~~B. "parole" means the release to the community of~~
25 ~~an inmate of an institution by decision of the board or by~~

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1 ~~operation of law, subject to conditions imposed by the board~~
2 ~~and to its supervision;~~

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

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

6 ~~E. "director" means the director of the field~~
7 ~~services division of the corrections department or any employee~~
8 ~~designated by him; and]~~

9 A. "absconding" means that a person under
10 supervision willfully makes the person's whereabouts unknown to
11 the person's probation and parole officer or willfully fails to
12 report as ordered, and reasonable efforts by the probation and
13 parole officer to locate the person have been unsuccessful;

14 ~~[F.]~~ B. "adult" means any person convicted of a
15 crime by a district court;

16 C. "board" means the parole board;

17 D. "director" means the director of the adult
18 probation and parole division of the corrections department or
19 any employee designated by the director;

20 E. "geriatric inmate" means a person who:

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

24 (2) is sixty-five years of age or older;

25 (3) suffers from a chronic infirmity, illness

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1 or disease related to aging; and

2 (4) does not constitute a danger to the
3 person's own self or to society;

4 F. "institution" means the state penitentiary and
5 any other similar state institution;

6 G. "non-technical violation" means absconding or
7 violating any municipal or county ordinance or tribal, state or
8 federal law;

9 H. "parole" means the release to the community of
10 an inmate of an institution by decision of the board or by
11 operation of law, subject to conditions imposed by the board
12 and to its supervision;

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

15 (1) is under sentence to or 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
19 condition, is permanently and irreversibly physically
20 incapacitated; and

21 (3) does not constitute a danger to the
22 person's own self or to society;

23 J. "probation" means the procedure under which an
24 adult defendant is released by the court without imprisonment
25 under a conditional discharge, an order deferring sentence or

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1 an order partially or fully suspending sentence and subjecting
2 the defendant to conditions;

3 K. "technical violation" means a violation of the
4 conditions of probation or parole supervision other than those
5 violations constituting a non-technical violation; and

6 L. "terminally ill inmate" means a person who:

7 (1) is under sentence or confined in a prison
8 or other correctional institution under the control of the
9 corrections department;

10 (2) has an incurable condition caused by
11 illness or disease that would, within reasonable medical
12 judgment, produce death within six months; and

13 (3) does not constitute a danger to the
14 person's own self or to society."

15 SECTION 4. Section 31-21-9 NMSA 1978 (being Laws 1972,
16 Chapter 71, Section 17) is amended to read:

17 "31-21-9. PRESENTENCE [~~AND PRERELEASE~~] INVESTIGATIONS.--

18 A. Upon the order of any [~~district or magistrate~~]
19 court, the director shall prepare a presentence report [~~which~~]
20 that shall include [~~such information as the court may request.~~]

21 ~~B. Upon the order of any district court, the~~
22 ~~director shall prepare a prerelease report which the court~~
23 ~~shall use to determine the accused's qualifications for bail.~~
24 ~~The report shall include available information about the~~
25 ~~accused's family ties, employment, financial resources,~~

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1 ~~character, physical and mental condition, the length of his~~
2 ~~residence in the community, his]~~ any victim impact information,
3 the convicted person's state personal identification number,
4 the convicted person's record of convictions, [his record of
5 ~~appearance at court proceedings or of flight to avoid~~
6 ~~prosecution or failure to appear at court proceedings, and any~~
7 ~~history of drug or alcohol abuse]~~ the results of any validated
8 risk and needs assessments that may have been administered and
9 such other information as the court may request.

10 ~~[G.]~~ B. All local and state law enforcement
11 agencies shall furnish to the director any requested criminal
12 records."

13 **SECTION 5.** Section 31-21-13.1 NMSA 1978 (being Laws 1988,
14 Chapter 62, Section 3, as amended) is amended to read:

15 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

16 A. As used in this section, "intensive supervision
17 programs" means programs that provide highly structured and
18 intense supervision, with stringent reporting requirements, of
19 certain individuals who represent an excessively high
20 assessment of risk of violation of probation or parole,
21 emphasize meaningful rehabilitative activities and reasonable
22 alternatives without seriously increasing the risk of
23 recidivist crime and facilitate the payment of restitution by
24 the offender to the victim. "Intensive supervision programs"
25 [~~include~~] includes house arrest programs or electronic

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1 surveillance programs or both.

2 B. The corrections department shall implement and
3 operate intensive supervision programs in various local
4 communities. The programs shall provide services for
5 appropriate individuals by probation and parole officers of the
6 corrections department. The corrections department shall
7 promulgate rules [~~and regulations~~] to provide that the officers
8 providing these services have [~~a maximum case load of forty~~
9 ~~offenders~~] the training, resources and caseloads that enable
10 them to operate effectively and to provide for offender
11 selection and other criteria. The corrections department may
12 cooperate with all recognized law enforcement authorities and
13 share all necessary and pertinent information, records or
14 documents regarding probationers or parolees in order to
15 implement and operate these intensive supervision programs.

16 C. For purposes of this section, a judge
17 contemplating imposition of an intensive supervision program
18 for an individual shall consult with the adult probation and
19 parole division of the corrections department and [~~consider the~~
20 ~~recommendations before imposing such probation~~] review the
21 results of the validated risk and needs assessment. The [~~adult~~
22 ~~probation and parole~~] division [~~of the corrections department~~]
23 shall recommend only those individuals who score as high risk
24 and who would have otherwise been recommended for incarceration
25 for intensive supervision programs. A judge has discretion to

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1 impose an intensive supervision program for an individual,
2 regardless of recommendations made by the [~~adult probation and~~
3 ~~parole~~] division, only if a validated risk and needs assessment
4 has been provided to the judge and considered in the decision
5 to impose an intensive supervision program. Inmates eligible
6 for parole or within twelve months of eligibility for parole,
7 or inmates who would otherwise remain in a correctional
8 institution for lack of a parole plan or those parolees whose
9 parole the board would otherwise revoke, are eligible for
10 intensive supervision programs. The provisions of this section
11 do not limit or reduce the statutory authority vested in
12 probation and parole supervision as defined by any other
13 section of the Probation and Parole Act.

14 D. There is created in the state treasury the
15 "corrections department intensive supervision fund" to be
16 administered by the corrections department upon vouchers signed
17 by the secretary of corrections. Balances in the corrections
18 department intensive supervision fund shall not revert to the
19 general fund. Beginning July 1, 1988, the intensive
20 supervision programs established pursuant to this section shall
21 be funded by those supervision costs collected pursuant to the
22 provisions of Sections 31-20-6 and 31-21-10 NMSA 1978. The
23 corrections department is specifically authorized to hire
24 additional permanent or term full-time equivalent positions for
25 the purpose of implementing the provisions of this section."

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1 SECTION 6. Section 31-21-14 NMSA 1978 (being Laws 1955,
2 Chapter 232, Section 17, as amended) is amended to read:

3 "31-21-14. ~~[RETURN OF]~~ PAROLE ~~[VIOLATOR]~~ VIOLATIONS.--

4 A. At any time during release on parole:

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

18 ~~[B. the director]~~ (2) a probation and parole
19 officer may arrest the ~~[prisoner]~~ parolee without a warrant or
20 may deputize ~~[any]~~ an officer with the power of arrest to do so
21 by giving ~~[him]~~ the officer a written statement ~~[setting forth]~~
22 that the ~~[prisoner]~~ parolee has, in the judgment of the
23 ~~[director, violated the conditions of his release]~~ probation
24 and parole officer, committed a non-technical violation. Where
25 an arrest is made without a warrant, the ~~[prisoner]~~ parolee

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1 shall not be returned to the institution unless authorized by
2 the director or the board;

3 (3) a probation and parole officer may arrest
4 a parolee without a warrant or may deputize an officer with the
5 power of arrest to do so by giving the officer a written
6 statement that the parolee has, in the judgment of the
7 probation and parole officer, committed a technical violation
8 or non-technical violation if the parolee is serving a period
9 of parole stemming from a plea or conviction for a sex offense
10 enumerated in Subsection I of Section 29-11A-3 NMSA 1978, a
11 serious violent offense as enumerated in Paragraph (4) of
12 Subsection L of Section 33-2-34 NMSA 1978 or a human
13 trafficking offense as enumerated in Section 30-52-1 NMSA 1978;
14 or

15 (4) a probation and parole officer may arrest
16 a parolee for a technical or non-technical violation without a
17 warrant or may deputize an officer with the power of arrest to
18 do so if the probation and parole officer has reason to believe
19 that the parolee poses a flight risk or a danger to the
20 community.

21 B. Pending hearing as provided by law upon [any] a
22 charge of a non-technical violation, the [prisoner] parolee
23 shall remain incarcerated in the institution.

24 C. Upon arrest and detention for a non-technical
25 violation, the board shall cause the [prisoner] parolee to be

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1 promptly brought before it for a parole revocation hearing on
2 the [~~parole~~] non-technical violation charged, under rules [~~and~~
3 ~~regulations~~] the board may adopt.

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

9 [~~D.~~] E. A [~~prisoner~~] parolee for whose return a
10 warrant has been issued shall, if it is found that the warrant
11 cannot be served, be a fugitive from justice.

12 F. If it appears that [~~he~~] the parolee has
13 [~~violated the provisions of his release~~] committed a non-
14 technical violation, the board shall determine whether the time
15 from the date of the violation to the date of [~~his~~] the
16 parolee's arrest, or any part of it, shall be counted as time
17 served under the sentence.

18 G. At any time during release on parole, the board
19 or the director may issue a notice to appear to answer a charge
20 of a technical violation. The notice shall be served
21 personally upon the parolee and shall initiate a technical
22 violation process in accordance with Section 10 of this 2020
23 act."

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

3 "31-21-15. ~~[RETURN OF]~~ PROBATION ~~[VIOLATOR]~~ VIOLATIONS.--

4 A. At any time during probation:

5 (1) the court may issue a warrant for the
6 arrest of a probationer for a non-technical violation ~~[of any~~
7 ~~of the conditions of release]~~. The warrant shall authorize the
8 return of the probationer to the physical custody of the court
9 or to any ~~[suitable]~~ other detention facility designated by the
10 court;

11 (2) the court may issue a ~~[notice to appear to~~
12 ~~answer a charge of violation. The notice shall be personally~~
13 ~~served upon the probationer; or]~~ warrant for the arrest of a
14 probationer for a technical violation only if the probationer
15 is serving a period of probation pursuant to an order of
16 conditional discharge, suspended sentence or deferred sentence
17 stemming from a plea or conviction for a sex offense enumerated
18 in Subsection I of Section 29-11A-3 NMSA 1978, a serious
19 violent offense as enumerated in Paragraph (4) of Subsection L
20 of Section 33-2-34 NMSA 1978 or a human trafficking offense as
21 enumerated in Section 30-52-1 NMSA 1978;

22 (3) the director may arrest a probationer
23 without a warrant or may deputize ~~[any]~~ an officer with power
24 of arrest to do so by giving the officer a written statement
25 ~~[setting forth]~~ that the probationer has, in the judgment of

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1 the director, [~~violated the conditions of the probationer's~~
2 ~~release~~] committed a non-technical violation. The written
3 statement, delivered with the probationer by the arresting
4 officer to the official in charge of a county jail or other
5 place of detention, is sufficient warrant for the detention of
6 the probationer; or

7 (4) a probation and parole officer may arrest
8 a probationer for a technical or non-technical violation
9 without a warrant or may deputize an officer with the power of
10 arrest to do so if the probation and parole officer has reason
11 to believe the probationer poses a flight risk or a danger to
12 the community.

13 B. Upon the probationer's arrest and detention for
14 a non-technical violation:

15 (1) the director shall immediately notify the
16 court and submit in writing a report [showing in what]
17 describing the manner in which the probationer has violated the
18 conditions of release; and

19 [~~B. The court shall then hold a hearing, which may~~
20 ~~be informal, on the violation charged.~~]

21 (2) the court shall hold a probation
22 revocation hearing on the non-technical violation charged.

23 C. If the non-technical violation is established at
24 the probation revocation hearing, the court may continue or
25 revoke the probation or enter any other order as it sees fit.

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1 D. At any time during probation, the court may
2 issue a notice to appear to answer a charge of technical
3 violation. The notice shall be personally served upon the
4 probationer and shall initiate a technical violation hearing.

5 E. If the technical violation is established before
6 the court at a technical violation hearing, the court may:

7 (1) continue the original probation; ~~[or]~~

8 (2) revoke the probation and either:

9 (a) order a new probation with any
10 condition provided for in Section 31-20-5 or 31-20-6 NMSA 1978;
11 or

12 (b) require the probationer to serve the
13 balance of the sentence imposed or any lesser sentence; or

14 (3) if imposition of sentence was deferred,
15 ~~[the court may]~~ impose any sentence that might originally have
16 been imposed, but credit shall be given for time served on
17 probation.

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

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1 "probationer" means a person convicted of a crime by a
2 district, metropolitan, magistrate or municipal court and
3 released without imprisonment under a conditional discharge, an
4 order deferring sentence or an order partially or fully
5 suspending sentence and subjecting the defendant to conditions.

6 [D-] G. The board shall budget funds to cover
7 expenses of returning probationers to the court.

8 H. The sheriff of the county in which the
9 probationer was convicted is the court's agent in the
10 transportation of the probationer, but the director, with the
11 consent of the court, may utilize other state agencies for this
12 purpose when it is in the best interest of the state."

13 **SECTION 8.** Section 31-21-17.1 NMSA 1978 (being Laws 1994,
14 Chapter 21, Section 2) is amended to read:

15 "31-21-17.1. [~~ADMINISTRATION BY~~] MEDICAL OR GERIATRIC
16 PAROLE--PROCEDURES--DUTIES OF THE DEPARTMENT--DUTIES OF THE
17 BOARD.--

18 A. The corrections department shall promulgate
19 rules and shall implement a "medical and geriatric parole
20 program", including the form of an application for medical or
21 geriatric parole.

22 B. The director shall identify geriatric,
23 permanently incapacitated and terminally ill inmates and
24 authorize the release of those inmates who are eligible for
25 medical or geriatric [or medical] parole [based on rules

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1 ~~established by the board. The department shall forward an~~
2 ~~application and documentation in support of parole eligibility~~
3 ~~to the board within thirty days of receipt of an application~~
4 ~~from an inmate. The documentation shall include information~~
5 ~~concerning the inmate's age, medical history and prognosis,~~
6 ~~institutional behavior and adjustment and criminal history.~~
7 ~~The inmate or inmate's representative may submit an application~~
8 ~~to the board] and notify those inmates of the opportunity to~~
9 ~~apply for medical or geriatric parole. Upon receiving an~~
10 ~~application, the director shall determine within sixty days~~
11 ~~whether to recommend an inmate for medical or geriatric parole.~~
12 ~~The recommendation shall include the inmate's age, medical~~
13 ~~history and prognosis, if applicable, institutional behavior~~
14 ~~and adjustment. When the director recommends an inmate for~~
15 ~~medical or geriatric parole, the director shall submit a~~
16 ~~statement to the board that the inmate's release is not~~
17 ~~incompatible with the welfare of society.~~

18 C. Inmates who have not served their minimum
19 sentences may be considered eligible for parole under the
20 medical and geriatric parole program. Medical and geriatric
21 parole consideration shall be in addition to any other parole
22 for which a geriatric, permanently incapacitated or terminally
23 ill inmate may be eligible.

24 D. When considering an inmate for medical or
25 geriatric parole, the director may request that reasonable

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1 medical and mental health examinations be conducted.

2 E. When determining an inmate's eligibility for
3 geriatric or medical parole, the director shall consider the
4 following criteria concerning the inmate:

5 (1) age;

6 (2) severity of illness, disease or
7 infirmities;

8 (3) comprehensive health evaluation;

9 (4) institutional behavior;

10 (5) level of risk for violence; and

11 (6) alternatives to maintaining the geriatric,
12 permanently incapacitated or terminally ill inmate in
13 traditional settings.

14 F. The parole term of the geriatric, permanently
15 incapacitated or terminally ill inmate on medical or geriatric
16 parole shall be for the remainder of the inmate's sentence,
17 without diminution of sentence for good behavior.

18 G. The board shall release an inmate on medical or
19 geriatric parole upon recommendation from the director unless
20 the board finds by clear and convincing evidence that the
21 inmate's release is incompatible with the welfare of society
22 and states in writing its reason for the finding. The board
23 shall not deny medical or geriatric parole solely because of
24 the inmate's criminal history."

25 SECTION 9. A new section of the Probation and Parole Act

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1 is enacted to read:

2 "[NEW MATERIAL] INCENTIVES--SANCTIONS FOR TECHNICAL
3 VIOLATIONS.--

4 A. The adult probation and parole division of the
5 corrections department shall create and implement an incentives
6 and sanctions system to guide responses to negative and
7 positive behavior by probationers and parolees under the
8 supervision of the department. The system shall provide for
9 graduated responses to technical violations of supervision
10 conditions, in a swift, certain and proportional manner, and
11 include guidance and procedures to determine when and how to:

- 12 (1) request a warrant;
13 (2) initiate a hearing; and
14 (3) seek departmental approval to use
15 custodial interventions.

16 B. To implement and continuously improve the
17 incentives and sanctions system, the adult probation and parole
18 division shall:

19 (1) provide information and training on the
20 system for probation and parole officers of the division and
21 members and staff of the board;

22 (2) offer information and training on the
23 system to judges, prosecution and defense attorneys, law
24 enforcement personnel, detention center personnel, contracted
25 service providers and other interested personnel;

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1 (3) review the system at least every five
2 years to ensure that it adheres to evidence-based practices and
3 that the use of sanctions and incentives by probation and
4 parole officers is consistent across the state;

5 (4) ensure that the guidance and procedures
6 established by the system consider community safety and the
7 needs of the victim and offender;

8 (5) collect data relating to placement
9 decisions based on the system; and

10 (6) aggregate collected data and provide a
11 report to the appropriate legislative interim committee dealing
12 with courts, corrections and justice issues every two years.

13 C. A probation and parole officer who reasonably
14 believes that a probationer or parolee has committed one or
15 more technical violations that require a sanction shall consult
16 the incentives and sanctions system to determine an appropriate
17 response. Consistent with the system, the officer may impose a
18 non-detention sanction to gain the person's compliance with the
19 conditions of probation or parole.

20 D. Graduated sanctions for technical violations may
21 include three-day and seven-day detention in a county jail or
22 other place of detention. Sanctions served in detention shall
23 be counted as time served under the sentence."

24 **SECTION 10.** A new section of the Probation and Parole
25 Act is enacted to read:

.216694.1

1 "[NEW MATERIAL] TECHNICAL VIOLATIONS.--

2 A. If a probation and parole officer seeks to
3 impose detention for a technical violation, the officer shall
4 review the violation and proposed detention with a supervisor.

5 B. With supervisory approval, the probation and
6 parole officer shall review the violation and proposed
7 detention with the probationer or parolee and seek a signed
8 waiver from the probationer or parolee that acknowledges the
9 violation and accepts the proposed detention.

10 C. If the waiver for a probationer is rejected, the
11 probation and parole officer shall promptly report the alleged
12 violation to the court. If the waiver for a parolee is
13 rejected, the probation and parole officer shall promptly
14 report the alleged violation to the board and proceed to formal
15 resolution.

16 D. The probation and parole officer's written
17 report of a technical violation shall include the officer's
18 recommendation and justification as to final action or
19 resolution of the situation. The officer's recommendation is
20 not binding on the court."

21 **SECTION 11. REPEAL.**--Section 31-21-25.1 NMSA 1978 (being
22 Laws 1994, Chapter 21, Section 3) is repealed.

23 **SECTION 12. APPLICABILITY.**--The provisions of Section 9
24 of this act apply to persons whose probation or parole
25 commences subsequent to January 1, 2021 and to all persons on

.216694.1

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

1 probation or parole on January 1, 2021.

2 SECTION 13. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is January 1, 2021.

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