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HOUSE BILL 572

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO PROBATION; REMOVING RESPONSIBILITY FOR PROBATION FROM THE CORRECTIONS DEPARTMENT; CREATING THE PROBATION DIVISION OF THE ADMINISTRATIVE OFFICE OF THE COURTS; PROVIDING POWERS AND DUTIES; CREATING A FUND; MAKING AN APPROPRIATION.

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

SECTION 1. A new section of Chapter 34, Article 9 NMSA 1978 is enacted to read:

"[NEW MATERIAL] PROBATION DIVISION--CREATED.--The "probation division" is created in the administrative office of the courts to provide probation services pursuant to the Probation and Parole Act and other provisions of law. The chief probation officer shall be appointed by the director of the administrative office of the courts, subject to the approval of the supreme court. The probation division shall

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1 consist of probation offices associated with the district
2 courts in each judicial district."

3 SECTION 2. A new section of Chapter 34, Article 9 NMSA
4 1978 is enacted to read:

5 "[NEW MATERIAL] PROBATION DIVISION--CHIEF PROBATION
6 OFFICER--DUTIES.--The chief probation officer of the probation
7 division of the administrative office of the courts shall:

8 A. direct and supervise probation offices in the
9 provision of probation services and in the supervision of
10 probationers;

11 B. select and assign probation officers to serve in
12 each judicial district;

13 C. secure office space for probation division staff
14 in each judicial district, as necessary;

15 D. develop and implement methods of investigation,
16 supervision, recordkeeping and reporting in connection with
17 probationers;

18 E. provide for training of probation office staff;

19 F. cooperate with state agencies and private
20 entities with regard to the welfare of probationers;

21 G. report to the parole board regarding the status
22 of probationers under the supervision of the probation
23 division;

24 H. examine fiscal matters and the state of the
25 probation division and probation offices in each judicial

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1 district, gather information regarding the probation division's
2 needs and activities and prepare and transmit to the director
3 of the administrative office of the courts statistical data and
4 reports as to the business of the probation division;

5 I. receive, adjust and approve budgets submitted by
6 probation offices in each judicial district prior to submission
7 of the budgets to the director of the administrative office of
8 the courts; and

9 J. perform other duties as directed by the director
10 of the administrative office of the courts."

11 SECTION 3. Section 9-3-3 NMSA 1978 (being Laws 1977,
12 Chapter 257, Section 3, as amended) is amended to read:

13 "9-3-3. DEPARTMENT ESTABLISHED.--There is created in the
14 executive branch the "corrections department". The department
15 shall be a cabinet department and consist of, but not be
16 limited to, six divisions as follows:

17 A. the adult institutions division;

18 B. the adult [~~probation and~~] parole division;

19 C. the training academy division;

20 D. the corrections industries division, which shall
21 have administrative supervision of the management of prison
22 industries in every correctional facility under the
23 jurisdiction of the department. Notwithstanding the provisions
24 of Paragraph (10) of Subsection B of Section 9-3-5 NMSA 1978,
25 the director of the corrections industries division shall be

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1 appointed by and serve at the pleasure of the secretary of
2 corrections;

3 E. the administrative services division, which
4 shall be supportive of and responsive to the divisions and
5 shall provide administrative and personnel services to them;
6 and

7 F. the information technology division."

8 SECTION 4. Section 9-3-13 NMSA 1978 (being Laws 2003 (1st
9 S.S.), Chapter 1, Section 1, as amended) is amended to read:

10 "9-3-13. SEX OFFENDER MANAGEMENT BOARD--CREATION--
11 MEMBERSHIP--DUTIES.--

12 A. There is created within the New Mexico
13 sentencing commission the "sex offender management board".
14 Members of the sex offender management board who are not
15 members of the New Mexico sentencing commission, whose
16 membership is set forth in Section 9-3-10 NMSA 1978, shall not
17 be voting members of the New Mexico sentencing commission.

18 B. The sex offender management board shall be
19 composed of the following members:

- 20 (1) the attorney general or designee;
- 21 (2) a district attorney appointed by the
22 district attorneys association of New Mexico;
- 23 (3) the chief public defender or designee;
- 24 (4) a district court judge appointed by the
25 district court ~~[judge's]~~ judges association of New Mexico;

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1 (5) the secretary of corrections or designee;

2 (6) the secretary of health or designee;

3 (7) the secretary of children, youth and
4 families or designee;

5 (8) the secretary of public safety or
6 designee;

7 (9) the secretary of public education or
8 designee;

9 (10) the secretary of Indian affairs or
10 designee;

11 (11) one public member appointed by the
12 governor who is a board member of a New Mexico victims
13 organization;

14 (12) two representatives appointed by the
15 governor who are mental health professionals licensed to
16 practice in New Mexico. One of the mental health professionals
17 shall be a member of the association for the treatment of
18 sexual abusers and one shall be a juvenile sex offender
19 treatment specialist;

20 (13) a representative appointed by the
21 governor from the ~~[adult]~~ probation ~~[and parole]~~ division of
22 the ~~[corrections department]~~ administrative office of the
23 courts who has expertise in the supervision of sex offenders;

24 (14) a representative appointed by the
25 governor from the adult parole division of the corrections

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1 department who has expertise in the supervision of sex
2 offenders;

3 [~~(14)~~] (15) a representative appointed by the
4 governor from the law enforcement community who has expertise
5 regarding sex offender community notification, registration,
6 tracking and monitoring;

7 [~~(15)~~] (16) a representative appointed by the
8 governor who is affiliated with a civil liberties organization;
9 and

10 [~~(16)~~] (17) a representative appointed by the
11 governor who is affiliated with a faith-based organization.

12 C. The sex offender management board shall report
13 its findings and recommendations to the New Mexico sentencing
14 commission on a quarterly basis. The New Mexico sentencing
15 commission shall vote to approve, disapprove or revise the
16 recommendations of the board.

17 D. The sex offender management board shall:

18 (1) hold meetings at times and for periods as
19 the board deems necessary to accomplish its objectives, but
20 shall meet at least eight times a year;

21 (2) develop and prescribe a standard procedure
22 for the identification and evaluation of convicted sex
23 offenders. The procedure shall include behavior management,
24 monitoring, treatment and program compliance for sex offenders.
25 The board shall develop and recommend measures of success;

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1 (3) develop and recommend guidelines and
2 standards for the treatment of sex offenders that can be
3 utilized by offenders who are placed on probation, incarcerated
4 with the corrections department, placed on parole or placed in
5 a community corrections program. The guidelines and standards
6 shall include a monitoring process and a plan for developing
7 treatment programs for sex offenders, including determining the
8 duration, terms and conditions of probation and parole for sex
9 offenders;

10 (4) create a risk assessment screening tool
11 and program to assist sentencing of sex offenders, including
12 determining the duration, terms and conditions of probation and
13 parole for sex offenders;

14 (5) develop guidelines and standards for
15 monitoring sex offenders who are undergoing evaluation or
16 treatment, including behavioral monitoring;

17 (6) develop criteria for measuring a sex
18 offender's progress in treatment programs. The parole board
19 shall use the criteria approved by the New Mexico sentencing
20 commission to determine whether a sex offender may
21 appropriately be discharged from parole;

22 (7) develop a standardized procedure for the
23 identification and evaluation of juvenile sex offenders. The
24 procedure shall include behavior management, monitoring,
25 treatment and program compliance for juvenile sex offenders.

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- 1 The board shall develop and implement measures of success;
- 2 (8) develop and recommend guidelines and
- 3 standards for the treatment of juvenile sex offenders who are
- 4 placed on probation, committed to a state agency, placed on
- 5 parole or placed in a community corrections program;
- 6 (9) research and analyze safety issues raised
- 7 when sex offenders live in a community;
- 8 (10) study and consider the viability and
- 9 legality of a civil commitment program for sex offenders;
- 10 (11) research and determine the feasibility
- 11 and legality of implementing indeterminate sentencing for sex
- 12 offenders;
- 13 (12) study the use of clinical polygraph
- 14 testing as a means to evaluate sex offenders;
- 15 (13) evaluate sex offender treatment programs
- 16 administered by state agencies and recommend changes, if
- 17 needed, in those treatment programs; and
- 18 (14) review the provisions of the Sex Offender
- 19 Registration and Notification [~~and Registration~~] Act and
- 20 recommend changes, if needed, to that act.

21 E. The members of the sex offender management board

22 shall be paid pursuant to the Per Diem and Mileage Act and

23 shall receive no other perquisite, compensation or allowance."

24 SECTION 5. Section 29-16-6 NMSA 1978 (being Laws 1997,

25 Chapter 105, Section 6, as amended) is amended to read:

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1 "29-16-6. COLLECTION OF SAMPLES.--

2 A. A covered offender shall provide one or more
3 samples to the administrative center, as follows:

4 (1) a covered offender convicted on or after
5 July 1, 1997 shall provide a sample immediately upon request to
6 the corrections department as long as the request is made
7 before release from any correctional facility or, if the
8 covered offender is not sentenced to incarceration, shall
9 provide a sample immediately upon request to the probation
10 division of the administrative office of the courts before the
11 end of any period of probation or other supervised release;

12 (2) a covered offender incarcerated on or
13 after July 1, 1997 shall provide a sample immediately upon
14 request to the corrections department as long as the request is
15 made before release from any correctional facility;

16 (3) a covered offender on probation or other
17 supervised release on or after July 1, 1997 shall provide a
18 sample immediately upon request to the [~~corrections department~~]
19 probation division as long as the request is made before the
20 end of any period of probation or other supervised release; and

21 (4) a covered offender required to register or
22 renew [~~his~~] the covered offender's registration pursuant to the
23 provisions of the Sex Offender Registration and Notification
24 Act shall provide a sample immediately upon request to the
25 county sheriff located in any county in which the sex offender

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1 is required to register, unless the sex offender provided a
2 sample while in the custody of the corrections department to
3 the probation division or to the county sheriff of another
4 county in New Mexico in which the sex offender is registered.

5 B. A person eighteen years of age or over who is
6 arrested on or after January 1, 2007 for the commission of a
7 felony as provided in Section [~~1 of this 2006 act~~] 29-3-10 NMSA
8 1978 shall provide a sample immediately upon request to jail or
9 detention facility personnel, unless:

10 (1) the person has previously provided a
11 sample sufficient for DNA testing pursuant to the provisions of
12 this section;

13 (2) the sample is in the possession of the
14 administrative center; and

15 (3) the sample has not been expunged.

16 C. Samples from unidentified persons or relatives
17 of a missing person shall be provided to the administrative
18 center, as follows:

19 (1) upon the completion of a permission to
20 search form authorizing the collection of a DNA sample;

21 (2) upon the receipt of a properly executed
22 search warrant; or

23 (3) upon the issuance of a court order.

24 D. Samples from unidentified human remains shall be
25 provided by the state medical investigator.

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1 E. Samples of known reference materials from
2 missing persons shall be provided by the investigating law
3 enforcement agency."

4 **SECTION 6.** Section 31-13-1 NMSA 1978 (being Laws 1963,
5 Chapter 303, Section 29-14, as amended) is amended to read:

6 "31-13-1. FELONY CONVICTION--RESTORATION OF
7 CITIZENSHIP.--

8 A. A person who has been convicted of a felony
9 shall not be permitted to vote in any statewide, county,
10 municipal or district election held pursuant to the provisions
11 of the Election Code, unless the person:

12 (1) has completed the terms of a suspended or
13 deferred sentence imposed by a court;

14 (2) was unconditionally discharged from a
15 correctional facility under the jurisdiction of the corrections
16 department or was conditionally discharged from a correctional
17 facility under the jurisdiction of the corrections department
18 and has completed all conditions of probation or parole;

19 (3) was unconditionally discharged from a
20 correctional facility under the jurisdiction of a federal
21 corrections agency or was conditionally discharged from a
22 correctional facility under the jurisdiction of a federal
23 corrections agency and has completed all conditions of
24 probation or parole; or

25 (4) has presented the governor with a

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1 certificate verifying the completion of the sentence and was
2 granted a pardon or a certificate by the governor restoring the
3 person's full rights of citizenship.

4 B. When a person has completed the terms of a
5 suspended or deferred sentence imposed by a court for a felony
6 conviction, the clerk of the district court shall notify the
7 secretary of state. The secretary of state shall notify all
8 county clerks that the person is eligible for registration.

9 C. A person who has served the entirety of a
10 sentence imposed for a felony conviction, including a term of
11 ~~[probation or]~~ parole shall be issued a certificate of
12 completion by the corrections department. A person who served
13 the entirety of a sentence ending with a period of probation
14 shall be issued a certificate of completion by the probation
15 division of the administrative office of the courts. Upon
16 issuance, the corrections department or the probation division
17 shall inform the person that the person is entitled to register
18 to vote. The certificate of completion shall state that the
19 person's voting rights are restored.

20 D. When the corrections department or the probation
21 division issues a person a certificate of completion, the
22 corrections department or probation division shall notify the
23 secretary of state that the person is entitled to register to
24 vote. The secretary of state shall notify all county clerks
25 that the person is eligible for registration. Additionally, a

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1 county clerk shall accept the following documents as proof that
2 a person has served the entirety of the sentence for a felony
3 conviction and is eligible for registration:

4 (1) a judgment and sentence from a court of
5 this state, another state or the federal government, which
6 shows on its face that the person has completed the entirety of
7 the sentence;

8 (2) a certificate of completion from the
9 corrections department or the probation division; or

10 (3) a certificate of completion from another
11 state or the federal government.

12 E. A person who has been convicted of a felony
13 shall not be permitted to hold an office of public trust for
14 the state, a county, a municipality or a district, unless the
15 person has presented the governor with a certificate verifying
16 the completion of the sentence and was granted a pardon or a
17 certificate by the governor restoring the person's full rights
18 of citizenship."

19 **SECTION 7.** 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. When a person has been convicted of a crime for
23 which a sentence of imprisonment is authorized and when the
24 magistrate, metropolitan or district court has deferred or
25 suspended sentence, it shall order the defendant to be placed

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1 on probation for all or some portion of the period of deferment
2 or suspension if the defendant is in need of supervision,
3 guidance or direction that is feasible for the [~~corrections~~
4 ~~department~~] probation division of the administrative office of
5 the courts to furnish. Except for sex offenders as provided in
6 Section 31-20-5.2 NMSA 1978, the total period of probation for
7 district court shall not exceed five years and the total period
8 of probation for the magistrate or metropolitan courts shall be
9 no longer than the maximum allowable incarceration time for the
10 offense or as otherwise provided by law.

11 B. If a defendant is required to serve a period of
12 probation subsequent to a period of incarceration:

13 (1) the period of probation shall be served
14 subsequent to any required period of parole, with the time
15 served on parole credited as time served on the period of
16 probation and the conditions of probation imposed by the court
17 deemed as additional conditions of parole; and

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

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1 SECTION 8. Section 31-20-5.2 NMSA 1978 (being Laws 2003
2 (1st S.S.), Chapter 1, Section 7) is amended to read:

3 "31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS
4 AND CONDITIONS OF PROBATION.--

5 A. When a district court defers imposition of a
6 sentence for a sex offender, or suspends all or any portion of
7 a sentence for a sex offender, the district court shall include
8 a provision in the judgment and sentence that specifically
9 requires the sex offender to serve an indeterminate period of
10 supervised probation for a period of not less than five years
11 and not in excess of twenty years. A sex offender's period of
12 supervised probation may be for a period of less than twenty
13 years if, at a review hearing provided for in Subsection B of
14 this section, the state is unable to prove that the sex
15 offender should remain on probation. Prior to placing a sex
16 offender on probation, the district court shall conduct a
17 hearing to determine the terms and conditions of supervised
18 probation for the sex offender. The district court may
19 consider any relevant factors, including:

- 20 (1) the nature and circumstances of the
21 offense for which the sex offender was convicted or
22 adjudicated;
- 23 (2) the nature and circumstances of a prior
24 sex offense committed by the sex offender;
- 25 (3) rehabilitation efforts engaged in by the

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1 sex offender, including participation in treatment programs
2 while incarcerated or elsewhere;

3 (4) the danger to the community posed by the
4 sex offender; and

5 (5) a risk and needs assessment regarding the
6 sex offender, developed by the sex offender management board of
7 the New Mexico sentencing commission or another appropriate
8 entity, to be used by appropriate district court personnel.

9 B. A district court shall review the terms and
10 conditions of a sex offender's supervised probation at two and
11 one-half year intervals. When a sex offender has served the
12 initial five years of supervised probation, the district court
13 shall also review the duration of the sex offender's supervised
14 probation at two and one-half year intervals. When a sex
15 offender has served the initial five years of supervised
16 probation, at each review hearing the state shall bear the
17 burden of proving to a reasonable certainty that the sex
18 offender should remain on probation.

19 C. The district court may order a sex offender
20 placed on probation to abide by reasonable terms and conditions
21 of probation, including:

22 (1) being subject to intensive supervision by
23 a probation officer of the [~~corrections department~~] probation
24 division of the administrative office of the courts;

25 (2) participating in an outpatient or

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1 inpatient sex offender treatment program;

2 (3) a probationary agreement by the sex
3 offender not to use alcohol or drugs;

4 (4) a probationary agreement by the sex
5 offender not to have contact with certain persons or classes of
6 persons; and

7 (5) being subject to alcohol testing, drug
8 testing or polygraph examinations used to determine if the sex
9 offender is in compliance with the terms and conditions of
10 [~~his~~] the sex offender's probation.

11 D. The district court shall notify the sex
12 offender's counsel of record of an upcoming probation hearing
13 for a sex offender, and the sex offender's counsel of record
14 shall represent the sex offender at the probation hearing.
15 When a sex offender's counsel of record provides the court with
16 good cause that the counsel of record should not represent the
17 sex offender at the probation hearing and the sex offender is
18 subsequently unable to obtain counsel, the district court shall
19 notify the chief public defender of the upcoming probation
20 hearing and the chief public defender shall make representation
21 available to the sex offender at that hearing.

22 E. If the district court finds that a sex offender
23 has violated the terms and conditions of [~~his~~] the sex
24 offender's probation, the district court may revoke [~~his~~] the
25 sex offender's probation or may order additional terms and

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1 conditions of probation.

2 F. As used in this section, "sex offender" means a
3 person who is convicted of, pleads guilty to or pleads nolo
4 contendere to any one of the following offenses:

5 (1) kidnapping, as provided in Section 30-4-1
6 NMSA 1978, when committed with intent to inflict a sexual
7 offense upon the victim;

8 (2) criminal sexual penetration in the first,
9 second or third degree, as provided in Section 30-9-11 NMSA
10 1978;

11 (3) criminal sexual contact of a minor in the
12 second or third degree, as provided in Section 30-9-13 NMSA
13 1978;

14 (4) sexual exploitation of children in the
15 second degree, as provided in Section 30-6A-3 NMSA 1978; or

16 (5) sexual exploitation of children by
17 prostitution in the first or second degree, as provided in
18 Section 30-6A-4 NMSA 1978."

19 **SECTION 9.** Section 31-20-6 NMSA 1978 (being Laws 1963,
20 Chapter 303, Section 29-18, as amended) is amended to read:

21 "31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
22 SENTENCE.--The magistrate, metropolitan or district court shall
23 attach to its order deferring or suspending sentence reasonable
24 conditions as it may deem necessary to ensure that the
25 defendant will observe the laws of the United States and the

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1 various states and the ordinances of any municipality. The
2 defendant upon conviction shall be required to reimburse a law
3 enforcement agency or local crime stopper program for the
4 amount of any reward paid by the agency or program for
5 information leading to the defendant's arrest, prosecution or
6 conviction, but in no event shall reimbursement to the crime
7 stopper program preempt restitution to victims pursuant to the
8 provisions of Section 31-17-1 NMSA 1978. The defendant upon
9 conviction shall be required to pay the actual costs of the
10 defendant's supervised probation service to the ~~[adult]~~
11 probation ~~[and parole]~~ division of the ~~[corrections department]~~
12 administrative office of the courts or appropriate responsible
13 agency for deposit to the ~~[corrections department]~~ probation
14 division intensive supervision fund not exceeding one thousand
15 eight hundred dollars (\$1,800) annually to be paid in monthly
16 installments of not less than twenty-five dollars (\$25.00) and
17 not more than one hundred fifty dollars (\$150), as set by the
18 ~~[appropriate district supervisor]~~ director of the ~~[adult]~~
19 probation ~~[and parole]~~ division, based upon the financial
20 circumstances of the defendant. The defendant's payment of the
21 supervised probation costs shall not be waived unless the court
22 holds an evidentiary hearing and finds that the defendant is
23 unable to pay the costs. If the court waives the defendant's
24 payment of the supervised probation costs and the defendant's
25 financial circumstances subsequently change so that the

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1 defendant is able to pay the costs, the [~~appropriate district~~
2 ~~supervisor of the adult~~] chief probation [~~and parole~~] officer
3 of the probation division shall advise the court and the court
4 shall hold an evidentiary hearing to determine whether the
5 waiver should be rescinded. The court may also require the
6 defendant to:

7 A. provide for the support of persons for whose
8 support the defendant is legally responsible;

9 B. undergo available medical or psychiatric
10 treatment and enter and remain in a specified institution when
11 required for that purpose;

12 C. be placed on probation under the supervision,
13 guidance or direction of the [~~adult~~] probation [~~and parole~~]
14 division for a term not to exceed five years;

15 D. serve a period of time in volunteer labor to be
16 known as "community service". The type of labor and period of
17 service shall be at the sole discretion of the court; provided
18 that a person receiving community service shall be immune from
19 any civil liability other than gross negligence arising out of
20 the community service, and a person who performs community
21 service pursuant to court order or a criminal diversion program
22 shall not be entitled to wages, shall not be considered an
23 employee and shall not be entitled to workers' compensation,
24 unemployment benefits or any other benefits otherwise provided
25 by law. As used in this subsection, "community service" means

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1 labor that benefits the public at large or a public, charitable
2 or educational entity or institution;

3 E. make a contribution of not less than ten dollars
4 (\$10.00) and not more than one hundred dollars (\$100), to be
5 paid in monthly installments of not less than five dollars
6 (\$5.00), to a local crime stopper program, a local domestic
7 violence prevention or treatment program or a local drug abuse
8 resistance education program that operates in the territorial
9 jurisdiction of the court; and

10 F. satisfy any other conditions reasonably related
11 to the defendant's rehabilitation."

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

14 "31-21-5. DEFINITIONS.--As used in the Probation and
15 Parole Act:

16 A. "probation" means the procedure under which an
17 adult defendant, found guilty of a crime upon verdict or plea,
18 is released by the court without imprisonment under a suspended
19 or deferred sentence and subject to conditions;

20 B. "parole" means the release to the community of
21 an inmate of an institution by decision of the board or by
22 operation of law, subject to conditions imposed by the board
23 and to its supervision;

24 C. "institution" means the state penitentiary and
25 any other similar state institution hereinafter created;

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1 D. "board" means the parole board;

2 E. "parole director" means the director of the
3 [~~field services~~] adult parole division of the corrections
4 department or any employee designated by [~~him~~] the parole
5 director; [~~and~~]

6 F. "adult" means any person convicted of a crime by
7 a district court;

8 G. "chief probation officer" means the director of
9 the probation division or any employee designated by the chief
10 probation officer; and

11 H. "probation division" means the probation
12 division of the administrative office of the courts."

13 SECTION 11. Section 31-21-7 NMSA 1978 (being Laws 1955,
14 Chapter 232, Section 10, as amended) is amended to read:

15 "31-21-7. DUTIES OF PAROLE DIRECTOR.--The parole
16 director shall:

17 A. provide [~~probation and~~] parole services and
18 supervise [~~probationers and~~] parolees;

19 B. assign parole officers to serve in each judicial
20 district. Selection and assignment of parole officers to each
21 judicial district shall be made by the director;

22 C. obtain office quarters for the staff in each
23 district as necessary;

24 D. assign the secretarial, bookkeeping and
25 accounting work to clerical employees;

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1 E. direct the work of the parole officers and other
2 employees;

3 F. formulate methods of investigation, supervision,
4 recordkeeping and reports;

5 G. conduct training courses for the staff;

6 H. seek to cooperate with all agencies, public and
7 private, that are concerned with the treatment or welfare of
8 persons on [~~probation or~~] parole;

9 I. report to the [~~parole~~] board concerning the
10 status of parolees under [~~his~~] the parole director's
11 supervision; and

12 J. perform such other duties as directed by the
13 secretary of corrections."

14 SECTION 12. Section 31-21-8 NMSA 1978 (being Laws 1959,
15 Chapter 33, Section 1, as amended) is amended to read:

16 "31-21-8. [~~DIRECTOR TO ADMINISTER~~] ADMINISTRATION OF
17 INTERSTATE COMPACTS RELATING TO [CONVICTS] PERSONS ON PROBATION
18 AND PAROLE.--The parole director is the administrator of
19 interstate compacts relating to [convicts on probation and]
20 persons on parole, and the probation director is the
21 administrator of interstate compacts relating to persons on
22 probation."

23 SECTION 13. Section 31-21-10 NMSA 1978 (being Laws 1980,
24 Chapter 28, Section 1, as amended) is amended to read:

25 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

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1 A. An inmate of an institution who was sentenced to
2 life imprisonment becomes eligible for a parole hearing after
3 the inmate has served thirty years of the sentence. Before
4 ordering the parole of an inmate sentenced to life
5 imprisonment, the board shall:

6 (1) interview the inmate at the institution
7 where the inmate is committed;

8 (2) consider all pertinent information
9 concerning the inmate, including:

10 (a) the circumstances of the offense;

11 (b) mitigating and aggravating
12 circumstances;

13 (c) whether a deadly weapon was used in
14 the commission of the offense;

15 (d) whether the inmate is a habitual
16 offender;

17 (e) the reports filed under Section
18 31-21-9 NMSA 1978; and

19 (f) the reports of such physical and
20 mental examinations as have been made while in an institution;

21 (3) make a finding that a parole is in the
22 best interest of society and the inmate; and

23 (4) make a finding that the inmate is able and
24 willing to fulfill the obligations of a law-abiding citizen.

25 If parole is denied, the inmate sentenced to life

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1 imprisonment shall again become entitled to a parole hearing at
2 two-year intervals. The board may, on its own motion, reopen
3 any case in which a hearing has already been granted and parole
4 denied.

5 B. Unless the board finds that it is in the best
6 interest of society and the parolee to reduce the period of
7 parole, a person who was sentenced to life imprisonment shall
8 be required to undergo a minimum period of parole of five
9 years. During the period of parole, the person shall be under
10 the guidance and supervision of the board.

11 C. An inmate of an institution who was sentenced to
12 life imprisonment without possibility of release or parole is
13 not eligible for parole and shall remain incarcerated for the
14 entirety of the inmate's natural life.

15 D. Except for certain sex offenders as provided in
16 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
17 first, second or third degree felony and who has served the
18 sentence of imprisonment imposed by the court in an institution
19 designated by the corrections department shall be required to
20 undergo a two-year period of parole. An inmate who was
21 convicted of a fourth degree felony and who has served the
22 sentence of imprisonment imposed by the court in an institution
23 designated by the corrections department shall be required to
24 undergo a one-year period of parole. During the period of
25 parole, the person shall be under the guidance and supervision

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1 of the board.

2 E. Every person while on parole shall remain in the
3 legal custody of the institution from which the person was
4 released, but shall be subject to the orders of the board. The
5 board shall furnish to each inmate as a prerequisite to release
6 under its supervision a written statement of the conditions of
7 parole that shall be accepted and agreed to by the inmate as
8 evidenced by the inmate's signature affixed to a duplicate copy
9 to be retained in the files of the board. The board shall also
10 require as a prerequisite to release the submission and
11 approval of a parole plan. If an inmate refuses to affix the
12 inmate's signature to the written statement of the conditions
13 of parole or does not have an approved parole plan, the inmate
14 shall not be released and shall remain in the custody of the
15 institution in which the inmate has served the inmate's
16 sentence, excepting parole, until such time as the period of
17 parole the inmate was required to serve, less meritorious
18 deductions, if any, expires, at which time the inmate shall be
19 released from that institution without parole, or until such
20 time that the inmate evidences acceptance and agreement to the
21 conditions of parole as required or receives approval for the
22 inmate's parole plan or both. Time served from the date that
23 an inmate refuses to accept and agree to the conditions of
24 parole or fails to receive approval for the inmate's parole
25 plan shall reduce the period, if any, to be served under parole

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1 at a later date. If the district court has ordered that the
2 inmate make restitution to a victim as provided in Section
3 31-17-1 NMSA 1978, the board shall include restitution as a
4 condition of parole. The board shall also personally apprise
5 the inmate of the conditions of parole and the inmate's duties
6 relating thereto.

7 F. When a person on parole has performed the
8 obligations of the person's release for the period of parole
9 provided in this section, the board shall make a final order of
10 discharge and issue the person a certificate of discharge.

11 G. Pursuant to the provisions of Section 31-18-15
12 NMSA 1978, the board shall require the inmate as a condition of
13 parole:

14 (1) to pay the actual costs of parole services
15 to the adult [~~probation and~~] parole division of the corrections
16 department for deposit to the corrections department intensive
17 supervision fund not exceeding one thousand eight hundred
18 dollars (\$1,800) annually to be paid in monthly installments of
19 not less than twenty-five dollars (\$25.00) and not more than
20 one hundred fifty dollars (\$150), as set by the appropriate
21 district supervisor of the adult [~~probation and~~] parole
22 division, based upon the financial circumstances of the
23 defendant. The defendant's payment of the supervised parole
24 costs shall not be waived unless the board holds an evidentiary
25 hearing and finds that the defendant is unable to pay the

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1 costs. If the board waives the defendant's payment of the
2 supervised parole costs and the defendant's financial
3 circumstances subsequently change so that the defendant is able
4 to pay the costs, the appropriate district supervisor of the
5 adult [~~probation and~~] parole division shall advise the board
6 and the board shall hold an evidentiary hearing to determine
7 whether the waiver should be rescinded; and

8 (2) to reimburse a law enforcement agency or
9 local crime stopper program for the amount of any reward paid
10 by the agency or program for information leading to the
11 inmate's arrest, prosecution or conviction.

12 H. The provisions of this section shall apply to
13 all inmates except geriatric, permanently incapacitated and
14 terminally ill inmates eligible for the medical and geriatric
15 parole program as provided by the Parole Board Act."

16 **SECTION 14.** Section 31-21-13.1 NMSA 1978 (being Laws
17 1988, Chapter 62, Section 3, as amended) is amended to read:

18 "31-21-13.1. INTENSIVE SUPERVISION PROGRAMS.--

19 A. As used in this section, "intensive supervision
20 programs" means programs that provide highly structured and
21 intense supervision, with stringent reporting requirements, of
22 certain [~~individuals~~] persons who represent an excessively high
23 assessment of risk of violation of probation or parole,
24 emphasize meaningful rehabilitative activities and reasonable
25 alternatives without seriously increasing the risk of

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1 recidivist crime and facilitate the payment of restitution by
2 the offender to the victim. "Intensive supervision programs"
3 [~~include~~] includes house arrest programs or electronic
4 surveillance programs or both.

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

19 C. The probation division of the administrative
20 office of the courts shall implement and operate intensive
21 supervision programs for probationers in certain communities.
22 The intensive supervision programs shall provide services for
23 probationers through probation officers of the probation
24 division. The probation division shall promulgate rules to
25 provide that probation officers providing service in the

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1 intensive supervision programs shall have a maximum case load
2 of twenty probationers, criteria for selection of probationers
3 for the intensive supervision programs and other program
4 criteria. The probation division shall cooperate with law
5 enforcement authorities and share necessary and pertinent
6 information, records and documents about probationers with law
7 enforcement authorities in order to implement and operate the
8 intensive supervision programs.

9 [~~G.~~] D. For purposes of this section, a judge
10 contemplating imposition of an intensive supervision program
11 for [~~an individual~~] a person shall consult with the adult
12 [~~probation and~~] parole division of the corrections department
13 and the probation division and consider the recommendations of
14 those divisions before [~~imposing such probation~~] requiring
15 participation in an intensive supervision program. The adult
16 [~~probation and~~] parole division of the corrections department
17 and the probation division shall recommend for participation in
18 an intensive supervision program only those [~~individuals~~]
19 persons who would have otherwise been recommended for
20 incarceration [~~for intensive supervision programs~~]. A judge
21 has discretion to impose an intensive supervision program for
22 [~~an individual~~] a person, regardless of recommendations made by
23 the adult [~~probation and~~] parole division and the probation
24 division. Inmates eligible for parole, or within twelve months
25 of eligibility for parole, or inmates who would otherwise

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1 remain in a correctional institution for lack of a parole plan
2 or those parolees whose parole the board would otherwise revoke
3 are eligible for intensive supervision programs. The
4 provisions of this section do not limit or reduce the statutory
5 authority vested in probation and parole supervision as defined
6 by any other section of the Probation and Parole Act.

7 ~~[D.]~~ E. There is created in the state treasury the
8 "corrections department intensive supervision fund" to be
9 administered by the corrections department upon vouchers signed
10 by the secretary of corrections. Balances in the corrections
11 department intensive supervision fund shall not revert to the
12 general fund. Beginning July 1, 1988, the intensive
13 supervision programs established pursuant to this section shall
14 be funded by those supervision costs collected pursuant to the
15 provisions of ~~[Sections 31-20-6 and]~~ Section 31-21-10 NMSA
16 1978.

17 F. The "probation division intensive supervision
18 fund" is created as a nonreverting fund in the state treasury.
19 The fund consists of fees collected pursuant to the provisions
20 of Section 31-20-6 NMSA 1978, appropriations, income from
21 investment of the fund, gifts, grants, donations and bequests.
22 The fund shall be administered by the probation division, and
23 money in the fund is subject to appropriation by the
24 legislature for the operation and maintenance of the probation
25 division's intensive supervision programs established pursuant

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1 to this section. Disbursements from the fund shall be by
2 warrant of the secretary of finance and administration pursuant
3 to vouchers signed by the director of the probation division or
4 the director's authorized representative.

5 G. The corrections department [~~is~~] and the
6 probation division are specifically authorized to hire
7 additional permanent or term full-time-equivalent positions for
8 the purpose of implementing the provisions of this section."

9 SECTION 15. Section 31-21-27 NMSA 1978 (being Laws 2001,
10 Chapter 35, Section 1) is amended to read:

11 "31-21-27. REENTRY DRUG COURT PROGRAM FOR INMATES--
12 DISTRICT COURT SUPERVISION.--

13 A. The corrections department shall develop
14 criteria regarding the eligibility of an inmate for early
15 release into a reentry drug court program, including
16 requirements that the inmate:

17 (1) was incarcerated following conviction for
18 a nonviolent, drug-related offense; and

19 (2) is within eighteen months of release or
20 eligibility for parole.

21 B. The corrections department may petition a
22 district court that operates a reentry drug court program to
23 accept limited jurisdiction of an inmate. If the district
24 court grants the petition, the district court shall have
25 jurisdiction over the inmate and the corrections department

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1 shall retain its jurisdiction over the inmate pursuant to the
2 terms of the inmate's judgment and sentence.

3 C. The provisions of this section shall not be
4 interpreted to change the jurisdictional authority of the
5 sentencing court, pursuant to the provisions of the Rules of
6 Criminal Procedure for the District Courts, as promulgated by
7 the supreme court. The jurisdictional authority conferred upon
8 a reentry drug court pursuant to this section is limited to
9 acceptance and supervision of a released inmate by the reentry
10 drug court program.

11 D. The provisions of this section shall not be
12 interpreted to limit the statutory authority vested in the
13 adult [~~probation and~~] parole division of the corrections
14 department or the probation division of the administrative
15 office of the courts, pursuant to the provisions of the
16 Probation and Parole Act."

17 SECTION 16. Section 32A-2-17 NMSA 1978 (being Laws 1993,
18 Chapter 77, Section 46, as amended) is amended to read:

19 "32A-2-17. PREDISPOSITION STUDIES--REPORTS AND
20 EXAMINATIONS.--

21 A. After a petition has been filed and either a
22 finding with respect to the allegations of the petition has
23 been made or a notice of intent to admit the allegations of the
24 petition has been filed, the court may direct that a
25 predisposition study and report to the court be made in writing

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1 by the department or an appropriate agency designated by the
2 court concerning the child, the family of the child, the
3 environment of the child and any other matters relevant to the
4 need for treatment or to appropriate disposition of the case.
5 The following predisposition reports shall be provided to the
6 parties and the court five days before actual disposition or
7 sentencing:

8 (1) the adult [~~probation and~~] parole division
9 of the corrections department shall prepare a predisposition
10 report for a serious youthful offender;

11 (2) the department shall prepare a
12 predisposition report for a serious youthful offender who is
13 convicted of an offense other than first degree murder;

14 (3) the department shall prepare a
15 predisposition report for a youthful offender concerning the
16 youthful offender's amenability to treatment and if:

17 (a) the court determines that a juvenile
18 disposition is appropriate, the department shall prepare a
19 subsequent predisposition report; or

20 (b) the court makes the findings
21 necessary to impose an adult sentence pursuant to Section
22 32A-2-20 NMSA 1978, the adult [~~probation and~~] parole division
23 of the corrections department shall prepare a subsequent
24 predisposition report; and

25 (4) the department shall prepare a

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1 predisposition report for a delinquent offender, upon the
2 court's request.

3 B. Where there are indications that the child may
4 have a mental disorder or developmental disability, the court,
5 on motion by the children's court attorney or that of counsel
6 for the child, may order the child to be examined at a suitable
7 place by a physician or psychiatrist, a licensed psychologist,
8 a licensed professional clinical counselor or a licensed
9 independent social worker prior to a hearing on the merits of
10 the petition. An examination made prior to the hearing or as a
11 part of the predisposition study and report shall be conducted
12 on an outpatient basis, unless the court finds that placement
13 in a hospital or other appropriate facility is necessary.

14 C. The court, after a hearing, may order
15 examination by a physician or psychiatrist, a licensed
16 psychologist or a licensed professional clinical counselor or a
17 licensed independent social worker of a parent or custodian
18 whose ability to care for or supervise a child is an issue
19 before the court.

20 D. The court may order that a child adjudicated as
21 a delinquent child be administered a predispositional
22 evaluation by a professional designated by the department for
23 purposes of diagnosis, with direction that the court be given a
24 report indicating what disposition appears most suitable when
25 the interests of the child and the public are considered. The

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1 evaluation shall be completed within fifteen days of the
2 court's order and the preference shall be for performing the
3 evaluation in the child's community.

4 E. If a child is detained for purposes of
5 performing a predispositional evaluation, it shall be completed
6 within fifteen days and in no event shall a child be detained
7 for more than fifteen days within a three-hundred-sixty-five-
8 day period for a predispositional evaluation, unless for good
9 cause shown."

10 SECTION 17. Section 33-1-3 NMSA 1978 (being Laws 1969,
11 Chapter 226, Section 3, as amended) is amended to read:

12 "33-1-3. PURPOSE.--It is the purpose of the legislature
13 to create a single, unified corrections department to
14 administer all laws and exercise all functions formerly
15 administered and exercised by the penitentiary of New Mexico
16 and the state board of probation and parole, except to the
17 extent delegated to the parole board by the Parole Board Act
18 and except to the extent responsibilities are vested in the
19 probation division of the administrative office of the courts
20 by provision of law."

21 SECTION 18. Section 33-1-10 NMSA 1978 (being Laws 1973,
22 Chapter 119, Section 1, as amended) is amended to read:

23 "33-1-10. CORRECTIONAL OFFICERS--EMPLOYEES--ACTING AS
24 PEACE OFFICERS.--

25 A. Correctional officers of the corrections

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1 department or the probation division of the administrative
2 office of the courts, or any employee of the corrections
3 department or the probation division who has at the particular
4 time the principal duty to hold in custody or supervise any
5 person accused or convicted of a criminal offense or placed in
6 the legal custody or supervision of the corrections department
7 or the probation division, shall have the power of a peace
8 officer with respect to arrests and enforcement of laws when:

9 (1) on the premises of a New Mexico
10 correctional facility [~~or while~~];

11 (2) in a probation division office;

12 (3) transporting a person committed to or
13 under the supervision of the corrections department or the
14 probation division [~~when~~];

15 (4) supervising [~~any~~] a person committed to or
16 under the supervision of the corrections department or the
17 probation division anywhere within the state [~~or when~~]; or

18 (5) engaged in [~~any~~] an effort to pursue or
19 apprehend [~~any such~~] a person committed to or under the
20 supervision of the corrections department or the probation
21 division.

22 [~~No~~] B. A correctional officer or other employee of
23 the corrections department or the probation division shall not
24 be convicted or held liable for any act performed pursuant to
25 this section if a peace officer could lawfully have performed

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1 the same act in the same circumstances.

2 [B-] C. Crimes against a correctional officer or an
3 employee of the corrections department or the probation
4 division while in the lawful discharge of duties [~~which~~] that
5 confer peace officer status pursuant to this section shall be
6 deemed the same crimes and shall bear the same penalties as
7 crimes against a peace officer.

8 [G-] D. As used in this section, "supervising"
9 includes the performance of the following official duties by
10 [~~probation and~~] parole officers of the corrections department
11 and probation officers of the probation division:

- 12 (1) field investigations;
- 13 (2) surveillance;
- 14 (3) searches and seizures conducted alone or
15 in cooperation with a state or local law enforcement agency;
16 and
- 17 (4) security during the course of a probation
18 or parole revocation hearing or proceeding or any other hearing
19 or appearance required by law.

20 [D-] E. The provisions of this section [~~31-1-10~~
21 ~~NMSA-1978~~] shall apply to all pending applications and pending
22 cases."

23 SECTION 19. Section 33-9-8 NMSA 1978 (being Laws 1983,
24 Chapter 202, Section 8, as amended) is amended to read:

25 "33-9-8. LOCAL SELECTION PANEL.--A county, municipality
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1 or private nonprofit organization, individually or jointly, may
2 establish a local panel to exercise the duties and
3 responsibilities of the state panel pursuant to the provisions
4 of Section 33-9-7 NMSA 1978, and, using the same criteria as
5 the state panel, the local panel may screen and identify
6 criminal offenders. In no event shall the sentencing judge
7 order to be placed into a program any criminal offender whom
8 the local selection panel has not approved. The composition of
9 a local panel shall include, to the maximum extent possible,
10 representatives of the judiciary, the office of the district
11 attorney, the office of the public defender, the adult
12 [~~probation and~~] parole division of the department, the
13 probation division of the administrative office of the courts,
14 the county sheriff or the municipal police department and
15 individuals representing local programs and private citizens."

16 SECTION 20. Section 33-9-9 NMSA 1978 (being Laws 1983,
17 Chapter 202, Section 9, as amended) is amended to read:

18 "33-9-9. SENTENCING.--

19 A. In every case where the commitment of a person
20 to the department is contemplated by a sentencing judge and the
21 offender meets criteria for placement in community corrections,
22 a report shall be prepared by the adult [~~probation and~~] parole
23 division of the department containing a recommendation
24 regarding a community corrections placement or a diagnostic
25 evaluation shall be completed by the department containing the

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1 recommendation of the department regarding that placement,
2 including a statement that the criminal offender has been
3 approved for a program by the state or local selection panel.
4 The sentencing judge shall consider that report or evaluation
5 prior to making that commitment.

6 B. At a sentencing hearing, if a judge of a court
7 of competent jurisdiction determines placement in community
8 corrections is appropriate, [~~he~~] the judge shall defer or
9 suspend the sentence and, as a condition of probation, require
10 an individual to serve a period of time in a community
11 corrections program."

12 SECTION 21. Section 34-9-3 NMSA 1978 (being Laws 1959,
13 Chapter 162, Section 3, as amended) is amended to read:

14 "34-9-3. DIRECTOR--DUTIES.--The director of the
15 administrative office of the courts shall, under the
16 supervision and direction of the supreme court:

17 A. supervise all matters relating to administration
18 of the courts;

19 B. oversee direction of the probation division by
20 the division's chief probation officer;

21 [~~B-~~] C. examine fiscal matters and the state of the
22 dockets of the courts, secure information as to the courts'
23 need of assistance and prepare and transmit to the supreme
24 court statistical data and reports as to the business of the
25 courts and as to the business of the probation division based

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1 on reports prepared by the division's chief probation officer;

2 [~~G.~~] D. submit to the supreme court and to the
3 legislature by January 30 of each year a report of the
4 activities of the administrative office of the courts and of
5 the state of business of the courts and of the probation
6 division, including the statistical data submitted to the
7 supreme court pursuant to Subsection [~~B~~] C of this section, and
8 the director's recommendations. This report is a public
9 document;

10 [~~D.~~] E. deal with the problems of finance of those
11 courts supported by legislative appropriation and be concerned
12 with adequate but economical financing of each of these courts
13 and the equitable distribution of available funds among them.
14 For this purpose, the director shall receive, adjust and
15 approve proposed budgets submitted by these courts prior to
16 submission of the budgets for the courts and for the probation
17 division to the state budget division of the department of
18 finance and administration for inclusion in the executive
19 budget. The district courts of all counties within a judicial
20 district and the probation offices in each judicial district
21 shall be included within a single budget. Budget proposals
22 shall be submitted by the courts and the probation division at
23 the time and in the form prescribed by the director;

24 [~~E.~~] F. perform other duties in aid of the
25 administration of justice, the administration of the probation

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1 division and the administration and dispatch of the business of
2 the courts as directed by the supreme court. The courts and
3 the probation division shall comply with all requests of the
4 director for information; and

5 [F-] G. encourage that any behavioral health
6 services, including mental health and substance abuse services,
7 funded, provided, contracted for or approved by the office be
8 in compliance with the requirements of Section 9-7-6.4 NMSA
9 1978."

10 **SECTION 22.** Section 66-8-102 NMSA 1978 (being Laws 1953,
11 Chapter 139, Section 54, as amended) is amended to read:

12 "66-8-102. DRIVING UNDER THE INFLUENCE OF INTOXICATING
13 LIQUOR OR DRUGS--AGGRAVATED DRIVING UNDER THE INFLUENCE OF
14 INTOXICATING LIQUOR OR DRUGS--PENALTIES.--

15 A. It is unlawful for a person who is under the
16 influence of intoxicating liquor to drive a vehicle within this
17 state.

18 B. It is unlawful for a person who is under the
19 influence of any drug to a degree that renders the person
20 incapable of safely driving a vehicle to drive a vehicle within
21 this state.

22 C. It is unlawful for:

23 (1) a person to drive a vehicle in this state
24 if the person has an alcohol concentration of eight one
25 hundredths or more in the person's blood or breath within three

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1 hours of driving the vehicle and the alcohol concentration
2 results from alcohol consumed before or while driving the
3 vehicle; or

4 (2) a person to drive a commercial motor
5 vehicle in this state if the person has an alcohol
6 concentration of four one hundredths or more in the person's
7 blood or breath within three hours of driving the commercial
8 motor vehicle and the alcohol concentration results from
9 alcohol consumed before or while driving the vehicle.

10 D. Aggravated driving under the influence of
11 intoxicating liquor or drugs consists of:

12 (1) driving a vehicle in this state with an
13 alcohol concentration of sixteen one hundredths or more in the
14 driver's blood or breath within three hours of driving the
15 vehicle and the alcohol concentration results from alcohol
16 consumed before or while driving the vehicle;

17 (2) causing bodily injury to a human being as
18 a result of the unlawful operation of a motor vehicle while
19 driving under the influence of intoxicating liquor or drugs; or

20 (3) refusing to submit to chemical testing, as
21 provided for in the Implied Consent Act, and in the judgment of
22 the court, based upon evidence of intoxication presented to the
23 court, the driver was under the influence of intoxicating
24 liquor or drugs.

25 E. A first conviction pursuant to this section

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1 shall be punished, notwithstanding the provisions of Section
2 31-18-13 NMSA 1978, by imprisonment for not more than ninety
3 days or by a fine of not more than five hundred dollars (\$500),
4 or both; provided that if the sentence is suspended in whole or
5 in part or deferred, the period of probation may extend beyond
6 ninety days but shall not exceed one year. Upon a first
7 conviction pursuant to this section, an offender shall be
8 sentenced to not less than twenty-four hours of community
9 service. In addition, the offender may be required to pay a
10 fine of three hundred dollars (\$300). The offender shall be
11 ordered by the court to participate in and complete a screening
12 program described in Subsection K of this section and to attend
13 a driver rehabilitation program for alcohol or drugs, also
14 known as a "DWI school", approved by the bureau and also may be
15 required to participate in other rehabilitative services as the
16 court shall determine to be necessary. In addition to those
17 penalties, when an offender commits aggravated driving under
18 the influence of intoxicating liquor or drugs, the offender
19 shall be sentenced to not less than forty-eight consecutive
20 hours in jail. If an offender fails to complete, within a time
21 specified by the court, any community service, screening
22 program, treatment program or DWI school ordered by the court
23 or fails to comply with any other condition of probation, the
24 offender shall be sentenced to not less than an additional
25 forty-eight consecutive hours in jail. Any jail sentence

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1 imposed pursuant to this subsection for failure to complete,
2 within a time specified by the court, any community service,
3 screening program, treatment program or DWI school ordered by
4 the court or for aggravated driving under the influence of
5 intoxicating liquor or drugs shall not be suspended, deferred
6 or taken under advisement. On a first conviction pursuant to
7 this section, any time spent in jail for the offense prior to
8 the conviction for that offense shall be credited to any term
9 of imprisonment fixed by the court. A deferred sentence
10 pursuant to this subsection shall be considered a first
11 conviction for the purpose of determining subsequent
12 convictions.

13 F. A second or third conviction pursuant to this
14 section shall be punished, notwithstanding the provisions of
15 Section 31-18-13 NMSA 1978, by imprisonment for not more than
16 three hundred sixty-four days or by a fine of not more than one
17 thousand dollars (\$1,000), or both; provided that if the
18 sentence is suspended in whole or in part, the period of
19 probation may extend beyond one year but shall not exceed five
20 years. Notwithstanding any provision of law to the contrary
21 for suspension or deferment of execution of a sentence:

22 (1) upon a second conviction, an offender
23 shall be sentenced to a jail term of not less than ninety-six
24 consecutive hours, not less than forty-eight hours of community
25 service and a fine of five hundred dollars (\$500). In addition

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1 to those penalties, when an offender commits aggravated driving
2 under the influence of intoxicating liquor or drugs, the
3 offender shall be sentenced to a jail term of not less than
4 ninety-six consecutive hours. If an offender fails to
5 complete, within a time specified by the court, any community
6 service, screening program or treatment program ordered by the
7 court, the offender shall be sentenced to not less than an
8 additional seven consecutive days in jail. A penalty imposed
9 pursuant to this paragraph shall not be suspended or deferred
10 or taken under advisement; and

11 (2) upon a third conviction, an offender shall
12 be sentenced to a jail term of not less than thirty consecutive
13 days, not less than ninety-six hours of community service and a
14 fine of seven hundred fifty dollars (\$750). In addition to
15 those penalties, when an offender commits aggravated driving
16 under the influence of intoxicating liquor or drugs, the
17 offender shall be sentenced to a jail term of not less than
18 sixty consecutive days. If an offender fails to complete,
19 within a time specified by the court, any community service,
20 screening program or treatment program ordered by the court,
21 the offender shall be sentenced to not less than an additional
22 sixty consecutive days in jail. A penalty imposed pursuant to
23 this paragraph shall not be suspended or deferred or taken
24 under advisement.

25 G. Upon a fourth conviction pursuant to this

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1 section, an offender is guilty of a fourth degree felony and,
2 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
3 shall be sentenced to a term of imprisonment of eighteen
4 months, six months of which shall not be suspended, deferred or
5 taken under advisement.

6 H. Upon a fifth conviction pursuant to this
7 section, an offender is guilty of a fourth degree felony and,
8 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
9 shall be sentenced to a term of imprisonment of two years, one
10 year of which shall not be suspended, deferred or taken under
11 advisement.

12 I. Upon a sixth conviction pursuant to this
13 section, an offender is guilty of a third degree felony and,
14 notwithstanding the provisions of Section 31-18-15 NMSA 1978,
15 shall be sentenced to a term of imprisonment of thirty months,
16 eighteen months of which shall not be suspended, deferred or
17 taken under advisement.

18 J. Upon a seventh or subsequent conviction pursuant
19 to this section, an offender is guilty of a third degree felony
20 and, notwithstanding the provisions of Section 31-18-15 NMSA
21 1978, shall be sentenced to a term of imprisonment of three
22 years, two years of which shall not be suspended, deferred or
23 taken under advisement.

24 K. Upon any conviction pursuant to this section, an
25 offender shall be required to participate in and complete,

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1 within a time specified by the court, an alcohol or drug abuse
2 screening program approved by the department of finance and
3 administration and, if necessary, a treatment program approved
4 by the court. The requirement imposed pursuant to this
5 subsection shall not be suspended, deferred or taken under
6 advisement.

7 L. Upon a second or third conviction pursuant to
8 this section, an offender shall be required to participate in
9 and complete, within a time specified by the court:

10 (1) not less than a twenty-eight-day
11 inpatient, residential or in-custody substance abuse treatment
12 program approved by the court;

13 (2) not less than a ninety-day outpatient
14 treatment program approved by the court;

15 (3) a drug court program approved by the
16 court; or

17 (4) any other substance abuse treatment
18 program approved by the court.

19 The requirement imposed pursuant to this subsection shall
20 not be suspended, deferred or taken under advisement.

21 M. Upon a felony conviction pursuant to this
22 section, the corrections department or the probation division
23 of the administrative office of the courts shall provide
24 substance abuse counseling and treatment to the offender in its
25 custody. While the offender is on probation or parole under

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1 ~~[its]~~ the supervision of the corrections department or the
2 probation division, the corrections department or probation
3 division shall also provide substance abuse counseling and
4 treatment to the offender or shall require the offender to
5 obtain substance abuse counseling and treatment.

6 N. Upon a conviction pursuant to this section, an
7 offender shall be required to obtain an ignition interlock
8 license and have an ignition interlock device installed and
9 operating on all motor vehicles driven by the offender,
10 pursuant to rules adopted by the ~~[traffic safety]~~ bureau.
11 Unless determined by the bureau to be indigent, the offender
12 shall pay all costs associated with having an ignition
13 interlock device installed on the appropriate motor vehicles.
14 The offender shall operate only those vehicles equipped with
15 ignition interlock devices for:

16 (1) a period of one year, for a first
17 offender;

18 (2) a period of two years, for a second
19 conviction pursuant to this section;

20 (3) a period of three years, for a third
21 conviction pursuant to this section; or

22 (4) the remainder of the offender's life, for
23 a fourth or subsequent conviction pursuant to this section.

24 O. Five years from the date of conviction and every
25 five years thereafter, a fourth or subsequent offender may

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1 apply to a district court for removal of the ignition interlock
2 device requirement provided in this section and for restoration
3 of a driver's license. A district court may, for good cause
4 shown, remove the ignition interlock device requirement and
5 order restoration of the license; provided that the offender
6 has not been subsequently convicted of driving a motor vehicle
7 under the influence of intoxicating liquor or drugs. Good
8 cause may include an alcohol screening and proof from the
9 interlock vendor that the person has not had violations of the
10 interlock device.

11 P. An offender who obtains an ignition interlock
12 license and installs an ignition interlock device prior to
13 conviction shall be given credit at sentencing for the time
14 period the ignition interlock device has been in use.

15 Q. In the case of a first, second or third offense
16 under this section, the magistrate court has concurrent
17 jurisdiction with district courts to try the offender.

18 R. A conviction pursuant to a municipal or county
19 ordinance in New Mexico or a law of any other jurisdiction,
20 territory or possession of the United States or of a tribe,
21 when that ordinance or law is equivalent to New Mexico law for
22 driving under the influence of intoxicating liquor or drugs,
23 and prescribes penalties for driving under the influence of
24 intoxicating liquor or drugs, shall be deemed to be a
25 conviction pursuant to this section for purposes of determining

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1 whether a conviction is a second or subsequent conviction.

2 S. In addition to any other fine or fee that may be
3 imposed pursuant to the conviction or other disposition of the
4 offense under this section, the court may order the offender to
5 pay the costs of any court-ordered screening and treatment
6 programs.

7 T. With respect to this section and notwithstanding
8 any provision of law to the contrary, if an offender's sentence
9 was suspended or deferred in whole or in part and the offender
10 violates any condition of probation, the court may impose any
11 sentence that the court could have originally imposed and
12 credit shall not be given for time served by the offender on
13 probation.

14 U. As used in this section:

15 (1) "bodily injury" means an injury to a
16 person that is not likely to cause death or great bodily harm
17 to the person, but does cause painful temporary disfigurement
18 or temporary loss or impairment of the functions of any member
19 or organ of the person's body; and

20 (2) "commercial motor vehicle" means a motor
21 vehicle or combination of motor vehicles used in commerce to
22 transport passengers or property if the motor vehicle:

23 (a) has a gross combination weight
24 rating of more than twenty-six thousand pounds inclusive of a
25 towed unit with a gross vehicle weight rating of more than ten

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1 thousand pounds;

2 (b) has a gross vehicle weight rating of
3 more than twenty-six thousand pounds;

4 (c) is designed to transport sixteen or
5 more passengers, including the driver; or

6 (d) is of any size and is used in the
7 transportation of hazardous materials, which requires the motor
8 vehicle to be placarded under applicable law."

9 SECTION 23. TEMPORARY PROVISION--TRANSFER OF PERSONNEL
10 AND PROPERTY--CONTRACTUAL OBLIGATIONS--STATUTORY REFERENCES.--

11 A. On the effective date of this act, all personnel
12 and all money, appropriations, records, furniture, equipment,
13 supplies and other property belonging to or used by the adult
14 probation and parole division of the corrections department in
15 connection with probation services are transferred to the
16 probation division of the administrative office of the courts.

17 B. On the effective date of this act, all money in
18 the corrections department intensive supervision fund that was
19 paid to the fund by persons required to pay for the actual
20 costs of the person's supervised probation shall be transferred
21 to the probation division intensive supervision fund.

22 C. On and after the effective date of this act, all
23 existing contracts, agreements and other obligations that
24 relate to probation services in effect for the adult probation
25 and parole division of the corrections department shall be

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1 binding on the probation division of the administrative office
2 of the courts.

3 D. On and after the effective date of this act, all
4 pending court cases, legal actions, appeals and other legal
5 proceedings and all pending administrative proceedings that
6 involve the adult probation and parole division of the
7 corrections department and that relate solely to probation
8 services shall be unaffected and shall continue in the name of
9 the probation division of the administrative office of the
10 courts. Pending legal or administrative proceedings described
11 in this subsection that relate to probation and parole services
12 shall be unaffected, but the probation division of the
13 administrative office of the courts shall be joined as a party.

14 E. On and after the effective date of this act, all
15 rules, orders and other official acts of the probation and
16 parole division of the corrections department that relate to
17 probation services shall continue in effect until amended,
18 replaced or repealed by the probation division of the
19 administrative office of the courts.

20 F. On and after the effective date of this act,
21 references in the law, rules and orders:

22 (1) to the "probation and parole division" or
23 the "adult probation and parole division" in connection with
24 parole services shall be deemed references to the adult parole
25 division of the corrections department; and

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1 (2) to the "probation and parole division" or
2 the "adult probation and parole division" in connection with
3 probation services shall be deemed references to the probation
4 division of the administrative office of the courts.

5 SECTION 24. REPEAL.--Section 33-1-7 NMSA 1978 (being
6 Laws 1969, Chapter 226, Section 9, as amended) is repealed.

7 SECTION 25. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2013.

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