
Bill Analysis 2021 Regular Session**SPONSOR:** Senator Bill O'Neill**SHORT TITLE:** Probation and Parole Violation Changes

SYNOPSIS OF BILL: SB 84 builds on the concept of HB 654 (2019) (veto) and HB 263 (2020) (passed House) by distinguishing between technical and standard violations but provides more specific guidance on sanctions. In so doing, it creates a statewide technical violation penalty scheme, addressing variations between judicial districts under current law. It would prevent full revocation for first, second, and third formal technical violations. It would retain the courts' existing authority to sanction "standard" violations, like committing new crimes, and retain that authority for fourth or subsequent technical violations. Technical violations occur when a probationer or parolee violate conditions of release that doesn't create a threat to others or does not constitute a new crime like failing a drug test, missing and appointment or associating with someone with a criminal record.

STRENGTHS: Currently, each judicial district has the option to adopt a technical violation program; some have, and some haven't, and they vary in their terms.¹ As a result, the sanctions for technical violations vary around the state. Codifying a statewide system for addressing technical violations that limits incarceration sanctions for minor infractions of supervised release ensures a focus on rehabilitation and breaks the cycle of incarceration that prevents many people from reintegrating into their communities after a conviction.²

The distinction between standard and technical violations in the bill captures the different levels of culpability for different violations and ensures that incarceration sanctions are focused on more culpable conduct that implicates public safety. The definition leaves discretion to determine that a violation presents a threat to the supervisee or the community.

WEAKNESSES: The bill leaves some issues unaddressed. Success on probation and parole often turns on having ready access to housing, employment, behavioral health services, substance misuse treatment, education, and other programs that are in short supply in New Mexico. Reorienting the supervision process to focus on real support and restorative systems is the best long-term solution to ensure that individuals under supervision meet their obligations and can truly get back on their feet after conviction.

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¹ See, e.g., LR1-306, LR2-307 (2d J.D.), LR7-301 (7th J.D.), LR5-301 (5th J.D.).

² Valerie Wright, Ph.D., *Deterrence in Criminal Justice*, 6-7 (Sentencing Project, Nov. 2010) ("[B]eing incarcerated versus remaining in the community was associated with a seven percent increase in recidivism"), available at <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>.

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<u>Safer</u>	<u>Apolitical</u>	<u>Fiscally Responsible</u>	<u>Evidence Based</u>	<u>Grade</u>
<p>This bill does not disturb judges' current options to sanction standard violations and leaves discretion to treat violations as standard violations under the facts of each individual case.</p> <p>For technical violations, it focuses on rehabilitation and reintegration to reduce recidivism, which makes communities safer.</p>	<p>Jurisdictions with different political leanings already have technical violation programs in place, but not every jurisdiction does, and local rules do not limit the judge's statutory authority to sanction technical violations upon revocation.</p> <p>Although New Mexico Corrections Department (NMCD) policy allows for graduated sanctions, codifying the approach ensures long-term consistency.³</p>	<p>The Legislative Finance Committee Fiscal Impact Report (FIR) for this bill notes that in FY22, 841 offenders were admitted to prison because of parole revocation and estimates 70 percent of those admissions were due to technical parole violations.³</p> <p>The average cost to incarcerate a single inmate in FY22 was \$54,900. It is fiscally irresponsible to impose prison sentences for minor release conditions violations, most of which are better addressed with treatment.</p>	<p>Studies evaluating the impact of jail versus community-based sanctions found no evidence to suggest that jail sanctions are any more or less effective than community-based graduated sanctions (such as increased treatment participation, electronic monitoring, and written assignments) in bringing about compliance with release conditions.⁴ Meanwhile, lengthy prison terms do increase recidivism rates.²</p>	<p>A</p>

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³ Legislative Finance Committee, FIR for 2023 SB 84 available at <https://www.nmlegis.gov/Sessions/23%20Regular/firs/SB0084.PDF>.

⁴ Wodahl, E.J., Boman IV, J.H., Garland, B.E. (2015), *Responding to probation and parole violations: Are jail sanctions more effective than community-based graduated sanctions?* JOURNAL OF CRIMINAL JUSTICE, 43, 242-250 (The imposition of a jail sanction for noncompliance as opposed to a community-based sanction did not affect the number of days until the next violation, the number of subsequent violations, or the overall likelihood of completing supervision); *see also* Rengifo, A.F. & Scott-Hayward, C.S. (2008). *Assessing the effectiveness of intermediate sanctions in Multnomah County, Oregon* (Clients who were given jail plus programs, while still more likely to recidivate than clients who did not receive any sanctions, had a lower likelihood of failure compared to the jail-only sub-sample); Drake, E. K., & Aos, S. (2012, July), *Confinement for technical violation of community supervision: Is there an effect on felony recidivism?* Washington State Institute for Public Policy (using jail as a sanction for a technical violation of the conditions of supervision does not lower recidivism for the commission of new felonies).