

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 308

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Antonio "Moe" Maestas and Richard C. Martinez

AN ACT

RELATING TO CRIMINAL PROCEDURE; CLARIFYING NOTICE PROCEDURES
FOR COURT REVIEW OF SEX OFFENDER PROBATION.

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

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

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

~~[A. When a district court defers imposition of a
sentence for a sex offender, or suspends all or any portion of
a sentence for a sex offender, the district court shall include
a provision in the judgment and sentence that specifically
requires the sex offender to serve an indeterminate period of
supervised probation for a period of not less than five years
and not in excess of twenty years. A sex offender's period of~~

underscored material = new
[bracketed material] = delete

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

1 ~~supervised probation may be for a period of less than twenty~~
2 ~~years if, at a review hearing provided for in Subsection B of~~
3 ~~this section, the state is unable to prove that the sex~~
4 ~~offender should remain on probation.]~~

5 A. A sex offender shall have the right to counsel
6 at all probation hearings.

7 B. Prior to placing or continuing a sex offender on
8 supervised probation, the district court shall conduct a
9 hearing to determine the terms and conditions of supervised
10 probation for the sex offender. The district court may
11 consider any relevant factors, including:

12 (1) the nature and circumstances of the
13 offense for which the sex offender was convicted or
14 adjudicated;

15 (2) the nature and circumstances of a prior
16 sex offense committed by the sex offender;

17 (3) rehabilitation efforts engaged in by the
18 sex offender, including participation in treatment programs
19 while incarcerated or elsewhere;

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

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

.209047.5SA

underscored material = new
[bracketed material] = delete

1 ~~[B. A district court shall review the terms and~~
2 ~~conditions of a sex offender's supervised probation at two and~~
3 ~~one-half year intervals.]~~

4 C. When a district court defers imposition of a
5 sentence for a sex offender, or suspends all or any portion of
6 a sentence for a sex offender, the district court shall include
7 a provision in the judgment and sentence that specifically
8 requires the sex offender to serve an indeterminate period of
9 supervised probation for a period of not less than five years
10 and not in excess of twenty years.

11 D. A sex offender's period of supervised probation
12 may be for a period of less than twenty years if, at a review
13 hearing provided for in Subsection E of this section, the state
14 is unable to prove that the sex offender should remain on
15 supervised probation.

16 E. When a sex offender has served the initial five
17 years of supervised probation, the district court shall also
18 review the duration of the sex offender's supervised probation
19 at two and one-half year intervals. Prior to the end of the
20 initial five years, the corrections department shall notify the
21 district attorney in the district where the sex offender was
22 sentenced and the sex offender's counsel of record, and the
23 district attorney shall petition the district court for a
24 review hearing to consider the necessity of extension of
25 supervised probation.

.209047.5SA

underscored material = new
[bracketed material] = delete

1 F. When a sex offender has served the initial five
2 years of supervised probation, at each review hearing the state
3 shall bear the burden of proving [~~to a reasonable certainty~~] by
4 clear and convincing evidence that the sex offender should
5 remain on supervised probation.

6 G. If the sex offender is still on supervised
7 probation after five years, the district court shall review the
8 terms and conditions of the sex offender's supervised probation
9 at two and one-half year intervals. Prior to the end of each
10 two and one-half year interval, the corrections department
11 shall notify the district attorney in the district where the
12 sex offender was sentenced and the sex offender's counsel of
13 record, and the district attorney shall petition the district
14 court for a review hearing to consider the terms and conditions
15 of supervised probation.

16 ~~[G.]~~ H. The district court may order a sex offender
17 placed on supervised probation to abide by reasonable terms and
18 conditions of probation, including:

19 (1) being subject to intensive supervision by
20 a probation officer of the corrections department;

21 (2) participating in an outpatient or
22 inpatient sex offender treatment program;

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

25 (4) a probationary agreement by the sex

underscored material = new
[bracketed material] = delete

1 offender not to have contact with certain persons or classes of
2 persons; and

3 (5) being subject to alcohol testing, drug
4 testing or polygraph examinations used to determine if the sex
5 offender is in compliance with the terms and conditions of
6 [his] probation.

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

18 ~~E.]~~ I. If the district court finds that a sex
19 offender has violated the terms and conditions of [his]
20 probation, the district court may revoke [his] the sex
21 offender's probation or may order additional terms and
22 conditions of probation.

23 ~~[F.]~~ J. As used in this section, "sex offender"
24 means a person who is convicted of, pleads guilty to or pleads
25 nolo contendere to any one of the following offenses:

.209047.5SA

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

4 (2) criminal sexual penetration in the first,
5 second or third degree, as provided in Section 30-9-11 NMSA
6 1978;

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

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

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

underscored material = new
[bracketed material] = delete