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_____ BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO THE SEX OFFENDER MANAGEMENT BOARD; REPEALING SECTION 9-3-13 NMSA 1978 (BEING LAWS 2003 (1st S.S.), CHAPTER 1, SECTION 1, AS AMENDED) PERTAINING TO THE SEX OFFENDER MANAGEMENT BOARD AND ELIMINATING STATUTORY REFERENCES TO THAT BOARD.

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

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1 requires the sex offender to serve an indeterminate period of
2 supervised probation for a period of not less than five years
3 and not in excess of twenty years. A sex offender's period of
4 supervised probation may be for a period of less than twenty
5 years if, at a review hearing provided for in Subsection B of
6 this section, the state is unable to prove that the sex
7 offender should remain on probation. Prior to placing a sex
8 offender on 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~~
24 ~~of the New Mexico sentencing commission or another~~] an
25 appropriate entity, to be used by appropriate district court

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1 personnel.

2 B. A district court shall review the terms and
3 conditions of a sex offender's supervised probation at two and
4 one-half year intervals. When a sex offender has served the
5 initial five years of supervised probation, the district court
6 shall also review the duration of the sex offender's supervised
7 probation at two and one-half year intervals. When a sex
8 offender has served the initial five years of supervised
9 probation, at each review hearing the state shall bear the
10 burden of proving to a reasonable certainty that the sex
11 offender should remain on probation.

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

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

17 (2) participating in an outpatient or
18 inpatient sex offender treatment program;

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

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

24 (5) being subject to alcohol testing, drug
25 testing or polygraph examinations used to determine if the sex

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1 offender is in compliance with the terms and conditions of
2 [~~his~~] the sex offender's probation.

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

14 E. If the district court finds that a sex offender
15 has violated the terms and conditions of [~~his~~] the sex
16 offender's probation, the district court may revoke [~~his~~] the
17 sex offender's probation or may order additional terms and
18 conditions of probation.

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

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

25 (2) criminal sexual penetration in the first,

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1 second or third degree, as provided in Section 30-9-11 NMSA
2 1978;

3 (3) criminal sexual contact of a minor in the
4 second or third degree, as provided in Section 30-9-13 NMSA
5 1978;

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

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

11 SECTION 2. Section 31-21-10.1 NMSA 1978 (being Laws 2003
12 (1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,
13 Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)
14 is amended to read:

15 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
16 CONDITIONS OF PAROLE.--

17 A. If the district court sentences a sex offender
18 to a term of incarceration in a facility designated by the
19 corrections department, the district court shall include a
20 provision in the judgment and sentence that specifically
21 requires the sex offender to serve an indeterminate period of
22 supervised parole for a period of:

23 (1) not less than five years and not in excess
24 of twenty years for the offense of kidnapping when committed
25 with intent to inflict a sexual offense upon the victim,

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1 criminal sexual penetration in the third degree, criminal
2 sexual contact of a minor in the fourth degree or sexual
3 exploitation of children in the second degree; or

4 (2) not less than five years and up to the
5 natural life of the sex offender for the offense of aggravated
6 criminal sexual penetration, criminal sexual penetration in the
7 first or second degree, criminal sexual contact of a minor in
8 the second or third degree or sexual exploitation of children
9 by prostitution in the first or second degree.

10 A sex offender's period of supervised parole may be for a
11 period of less than the maximum if, at a review hearing
12 provided for in Subsection C of this section, the state is
13 unable to prove that the sex offender should remain on parole.

14 B. Prior to placing a sex offender on parole, the
15 board shall conduct a hearing to determine the terms and
16 conditions of supervised parole for the sex offender. The
17 board may consider any relevant factors, including:

18 (1) the nature and circumstances of the
19 offense for which the sex offender was incarcerated;

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

22 (3) rehabilitation efforts engaged in by the
23 sex offender, including participation in treatment programs
24 while incarcerated or elsewhere;

25 (4) the danger to the community posed by the

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1 sex offender; and

2 (5) a risk and needs assessment regarding the
3 sex offender, developed by [~~the sex offender management board~~
4 ~~of the New Mexico sentencing commission or another~~] an
5 appropriate entity, to be used by appropriate parole board
6 personnel.

7 C. When a sex offender has served the initial five
8 years of supervised parole, and at two and one-half year
9 intervals thereafter, the board shall review the duration of
10 the sex offender's supervised parole. At each review hearing,
11 the attorney general shall bear the burden of proving by clear
12 and convincing evidence that the sex offender should remain on
13 parole.

14 D. The board may order a sex offender released on
15 parole to abide by reasonable terms and conditions of parole,
16 including:

17 (1) being subject to intensive supervision by
18 a parole officer of the corrections department;

19 (2) participating in an outpatient or
20 inpatient sex offender treatment program;

21 (3) a parole agreement by the sex offender not
22 to use alcohol or drugs;

23 (4) a parole agreement by the sex offender not
24 to have contact with certain persons or classes of persons; and

25 (5) being subject to alcohol testing, drug

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1 testing or polygraph examinations used to determine if the sex
2 offender is in compliance with the terms and conditions of the
3 sex offender's parole.

4 E. The board shall require electronic real-time
5 monitoring of every sex offender released on parole for the
6 entire time the sex offender is on parole. The electronic
7 monitoring shall use global positioning system monitoring
8 technology or any successor technology that would give
9 continuous information on the sex offender's whereabouts and
10 enable law enforcement and the corrections department to
11 determine the real-time position of a sex offender to a high
12 level of accuracy.

13 F. The board shall notify the chief public defender
14 of an upcoming parole hearing for a sex offender pursuant to
15 Subsection C of this section, and the chief public defender
16 shall make representation available to the sex offender at the
17 parole hearing.

18 G. If the board finds that a sex offender has
19 violated the terms and conditions of the sex offender's parole,
20 the board may revoke the sex offender's parole or may modify
21 the terms and conditions of parole.

22 H. The provisions of this section shall apply to
23 all sex offenders, except geriatric, permanently incapacitated
24 and terminally ill inmates eligible for the medical and
25 geriatric parole program as provided by the Parole Board Act.

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

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

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

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

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

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

18 (6) child solicitation by electronic
19 communication device, as provided in Section 30-37-3.2 NMSA
20 1978."

21 SECTION 3. REPEAL.--Section 9-3-13 NMSA 1978 (being Laws
22 2003 (1st S.S.), Chapter 1, Section 1, as amended) is repealed.