

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 463

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT A SEX OFFENDER
REMAIN ON PAROLE FOR THE ENTIRETY OF HIS NATURAL LIFE;
ESTABLISHING FACTORS FOR THE PAROLE BOARD TO CONSIDER PRIOR TO
RELEASING A SEX OFFENDER FROM PAROLE; AMENDING AND ENACTING
SECTIONS OF THE PROBATION AND PAROLE ACT.

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

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

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

A. An inmate of an institution who was sentenced to
life imprisonment as the result of the commission of a capital
felony, who was convicted of three violent felonies and
sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978

1 or who was convicted of two violent sexual offenses and
2 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
3 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
4 parole hearing after he has served thirty years of his
5 sentence. Before ordering the parole of an inmate sentenced to
6 life imprisonment, the board shall:

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

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

11 (a) the circumstances of the offense;

12 (b) mitigating and aggravating
13 circumstances;

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

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

18 (e) the reports filed under Section
19 31-21-9 NMSA 1978; and

20 (f) the reports of such physical and
21 mental examinations as have been made while in ~~[prison]~~ an
22 institution;

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

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

3 If parole is denied, the inmate sentenced to life
4 imprisonment shall again become entitled to a parole hearing at
5 two-year intervals. The board may, on its own motion, reopen
6 any case in which a hearing has already been granted and parole
7 denied.

8 B. Unless the board finds that it is in the best
9 interest of society and the parolee to reduce the period of
10 parole, a person who was convicted of a capital felony shall be
11 required to undergo a minimum period of parole of five years.
12 During the period of parole, the person shall be under the
13 guidance and supervision of the board.

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

2 D. Every person while on parole shall remain in the
3 legal custody of the institution from which he was released,
4 but shall be subject to the orders of the board. The board
5 shall furnish to each inmate as a prerequisite to his 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 his signature affixed to a duplicate copy to be
9 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 his
12 signature to the written statement of the conditions of his
13 parole or does not have an approved parole plan, he shall not
14 be released and shall remain in the custody of the [~~corrections~~
15 ~~facility~~] institution in which he has served his sentence,
16 excepting parole, until such time as the period of parole he
17 was required to serve, less meritorious deductions, if any,
18 expires, at which time he shall be released from that
19 [~~facility~~] institution without parole, or until such time that
20 he evidences his acceptance and agreement to the conditions of
21 parole as required or receives approval for his parole plan or
22 both. Time served from the date that an inmate refuses to
23 accept and agree to the conditions of parole or fails to
24 receive approval for his parole plan shall reduce the period,
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1 if any, to be served under parole at a later date. If the
2 district court has ordered that the inmate make restitution to
3 a victim as provided in Section 31-17-1 NMSA 1978, the board
4 shall include restitution as a condition of parole. The board
5 shall also personally apprise the inmate of the conditions of
6 parole and his duties relating thereto.

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

11 F. 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 his parole
15 services to the adult probation and parole division of the
16 corrections department for deposit to the corrections
17 department intensive supervision fund not exceeding one
18 thousand twenty dollars (\$1,020) annually to be paid in monthly
19 installments of not less than fifteen dollars (\$15.00) and not
20 more than eighty-five dollars (\$85.00), subject to modification
21 by the adult probation and parole division on the basis of
22 changed financial circumstances; and

23 (2) to reimburse a law enforcement agency or
24 local crime stopper program for the amount of any reward paid
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1 by the agency or program for information leading to his arrest,
2 prosecution or conviction.

3 G. The provisions of this section shall apply to
4 all inmates except geriatric, permanently incapacitated and
5 terminally ill inmates eligible for the medical and geriatric
6 parole program as provided by the Parole Board Act. "

7 Section 2. A new section of the Probation and Parole Act,
8 Section 31-21-10.1 NMSA 1978, is enacted to read:

9 "31-21-10.1. [NEW MATERIAL] SEX OFFENDERS--PERIOD OF
10 PAROLE--TERMS AND CONDITIONS OF PAROLE.--

11 A. Prior to the release on parole of a sex
12 offender, or at any subsequent parole hearing, the board shall
13 conduct a hearing to determine the duration, terms and
14 conditions of parole for the sex offender. Unless the board
15 orders otherwise, a sex offender's period of parole shall be
16 the entirety of the sex offender's natural life. The board may
17 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; and
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1 (4) the danger to the community posed by the
2 sex offender.

3 B. The board shall review the terms and conditions
4 of a sex offender's parole at two-year intervals. If the sex
5 offender satisfactorily demonstrates and the board finds that
6 the sex offender's parole may be discharged or that certain
7 terms and conditions of parole are no longer necessary, the
8 board may amend its order accordingly.

9 C. The board may order a sex offender released on
10 parole to abide by reasonable terms and conditions of parole,
11 including:

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

14 (2) participating in an outpatient or
15 inpatient sex offender treatment program;

16 (3) an agreement by the sex offender to not
17 use alcohol or drugs;

18 (4) an agreement by the sex offender to not
19 have contact with certain persons or classes of persons; and

20 (5) being subject to alcohol testing, drug
21 testing, polygraph examinations, voice stress analysis or
22 similar examinations used to determine if the sex offender is
23 in compliance with the terms and conditions of his parole.

24 D. The board shall notify the chief public defender
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1 of an upcoming parole hearing for a sex offender, and the chief
2 public defender shall determine if the sex offender requires
3 assistance of counsel at the parole hearing.

4 E. If the board finds that a sex offender has
5 violated the terms and conditions of his parole, the board may
6 revoke his parole or may order additional terms and conditions
7 of parole.

8 F. The provisions of this section shall apply to
9 all sex offenders, except geriatric, permanently incapacitated
10 and terminally ill inmates eligible for the medical and
11 geriatric parole program as provided by the Parole Board Act.

12 G. As used in this section, "sex offender" means a
13 person who is convicted of, pleads guilty to or pleads nolo
14 contendere to any one of the following offenses:

15 (1) criminal sexual penetration in the first,
16 second or third degree, as provided in Section 30-9-11 NMSA
17 1978;

18 (2) criminal sexual contact of a minor in the
19 third degree, as provided in Section 30-9-13 NMSA 1978; or

20 (3) sexual exploitation of children, as
21 provided in Subsection B, C or D of Section 30-6A-3 NMSA 1978. "

22 Section 3. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 2001.

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