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**HOUSE BILL 111**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Ron Godbey**

**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 or who was convicted of two violent sexual offenses and**

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

6 (1) interview the inmate at the institution  
7 where he 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 ~~[prison]~~ an  
21 institution;

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

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

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1 citizen.

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

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

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

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

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1 make restitution to a victim as provided in Section 31-17-1  
2 NMSA 1978, the board shall include restitution as a condition  
3 of parole. The board shall also personally apprise the inmate  
4 of the conditions of parole and his duties relating thereto.

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

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

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

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

25 G. The provisions of this section shall apply to

. 139639. 2

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1 all inmates except geriatric, permanently incapacitated and  
2 terminally ill inmates eligible for the medical and geriatric  
3 parole program as provided by the Parole Board Act. "

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

6 "31-21-10.1. [NEW MATERIAL] SEX OFFENDERS--PERIOD OF  
7 PAROLE--TERMS AND CONDITIONS OF PAROLE. --

8 A. Prior to the release on parole of a sex  
9 offender, or at any subsequent parole hearing, the board shall  
10 conduct a hearing to determine the duration, terms and  
11 conditions of parole for the sex offender. Unless the board  
12 orders otherwise, a sex offender's period of parole shall be  
13 the entirety of the sex offender's natural life. The board  
14 may consider any relevant factors, including:

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

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

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

22 (4) the danger to the community posed by the  
23 sex offender.

24 B. The board shall review the terms and conditions  
25 of a sex offender's parole at two-year intervals. If the sex

. 139639. 2

1 offender satisfactorily demonstrates and the board finds that  
2 the sex offender's parole may be discharged or that certain  
3 terms and conditions of parole are no longer necessary, the  
4 board may amend its order accordingly.

5 C. The board may order a sex offender released on  
6 parole to abide by reasonable terms and conditions of parole,  
7 including:

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

10 (2) participating in an outpatient or  
11 inpatient sex offender treatment program;

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

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

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

20 D. The board shall notify the chief public  
21 defender of an upcoming parole hearing for a sex offender, and  
22 the chief public defender shall determine if the sex offender  
23 requires assistance of counsel at the parole hearing.

24 E. If the board finds that a sex offender has  
25 violated the terms and conditions of his parole, the board may

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1 revoke his parole or may order additional terms and conditions  
2 of parole.

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

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

10 (1) criminal sexual penetration in the first,  
11 second or third degree, as provided in Section 30-9-11 NMSA  
12 1978;

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

15 (3) sexual exploitation of children, as  
16 provided in Subsection B, C or D of Section 30-6A-3 NMSA  
17 1978. "

18 Section 3. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2002.