

April 7, 2015

HOUSE EXECUTIVE MESSAGE NO. 11

The Honorable Don L. Tripp, Speaker of the House and  
Members of the House of Representatives  
State Capitol Building  
Santa Fe, NM 87501

Honorable Speaker Tripp and Members of the House:

Pursuant to the Constitution of the State of New Mexico, Article IV, Section 22, I hereby VETO and return HOUSE BILL 332, as amended, enacted by the Fifty-Second Legislature, First Session, 2015.

House Bill 332 mandates that after only one year of probation, an offender's supervised probation automatically converts every thirty days (without a probation violation) into thirty days of unsupervised probation. This mandatory requirement divests the probation officer and judge of their authority and discretion to fully monitor offenders. For example, offenders that have chronic or habitual alcohol and drug problems, anger management issues, or those offenders who commit violent crimes, such as child abuse, domestic violence, rape, and murder would no longer be required to receive the full supervision and treatment as determined *necessary* by the court. This outcome fails to recognize the importance of probation for both the community and the offender.

This legislation also fails to recognize the valuable role of the judges and probation officers tasked with educating and rehabilitating those convicted of crimes in keeping our communities safe.

The general purposes of probation under federal and New Mexico law are rehabilitation and deterrence, which promote community safety. Our courts have noted that probation is an act of clemency resting in the sound discretion of the trial court. It is the release by the court without imprisonment of an adult defendant *convicted* of a crime. Probation constitutes "a form of conditional liberty intended to alleviate the aspects of punishment by incarceration," and "it offers rehabilitation and restoration to society."

A judge, in fashioning the terms of probation, may impose conditions reasonably related to the probationer's rehabilitation, which are designed to protect the public against the

commission of other offenses during the term of probation and which have as their objective the deterrence of future misconduct. Often, terms and conditions of probation may include terms such as domestic violence counseling, anger management classes, substance abuse treatment, no contact with known gang members, obtain a high school diploma or equivalency, maintain full time employment, perform community service or pay restitution. All of these terms are designed to not only help the offender, but also to reduce recidivism and prevent future crime. Reducing the period of probation in such an arbitrary manner, as required by House Bill 332, frustrates rehabilitation efforts and jeopardizes public safety.

The legislature has specified that not all probation must be served and some probation may be unsupervised. Courts already exercise this discretion. The New Mexico Corrections Department has in place a policy and procedure, CD-051500 and CD-051501, which allows for probation officers to review offender progress for early termination and, where appropriate, request that the sentencing judge enter an order for an early termination of probation. The appropriate officials, the probation officer and the judge, who know when *both* the offender and the public will no longer benefit from continued supervision, are already empowered to terminate supervision early.

Finally, the House Bill 332 amendments to NMSA 1978, Section 31-20-5 are in conflict with Section 31-20-5.2, which requires sex offenders to be on supervised probation for not less than five years. House Bill 332 mandates that all offenders on probation “shall,” after one year on probation, be given thirty days of unsupervised probation credit for every thirty days on probation without a probation violation. As such, under this legislation, you could have a sex offender complete his supervised probation term in only three years, which is in conflict with the Section 31-20-5.2 requirements.

It is clear to me that this legislation does not promote good public policy and unnecessarily jeopardizes public safety. For these reasons, I am vetoing House Bill 332.

Respectfully yours,

Susana Martinez  
Governor

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RECEIVED FROM THE OFFICE OF THE GOVERNOR

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_, 2015

By \_\_\_\_\_  
Secretary of State

Time: \_\_\_\_\_ a.m. p.m.  
Date: \_\_\_\_\_, 2015

By \_\_\_\_\_  
Chief Clerk of the Senate