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SENATE BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO SEX OFFENDER PAROLE; REVISING THE TERMS AND  
CONDITIONS OF PAROLE FOR SEX OFFENDERS.

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

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

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

A. If the district court sentences a sex offender  
to a term of incarceration in a facility designated by the  
corrections department, the district court shall include a  
provision in the judgment and sentence that specifically  
requires the sex offender to serve an indeterminate period of

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1 supervised parole for a period of:

2 (1) not less than five years and not in excess  
3 of twenty years for the offense of kidnapping when committed  
4 with intent to inflict a sexual offense upon the victim,  
5 criminal sexual penetration in the third degree, criminal  
6 sexual contact of a minor in the fourth degree, ~~[or]~~ sexual  
7 exploitation of children in the second degree or child  
8 solicitation by electronic communication device; or

9 (2) not less than five years and up to the  
10 natural life of the sex offender for the offense of aggravated  
11 criminal sexual penetration, criminal sexual penetration in the  
12 first or second degree, criminal sexual contact of a minor in  
13 the second or third degree or sexual exploitation of children  
14 by prostitution in the first or second degree.

15 A sex offender's period of supervised parole ~~[may be for a~~  
16 ~~period of less than the maximum if]~~ shall not exceed the five-  
17 year minimum unless, at a review hearing provided for in  
18 Subsection ~~[G]~~ D of this section, the state is ~~[unable]~~ able to  
19 prove that the sex offender should remain on parole.

20 B. Prior to placing a sex offender on parole, the  
21 board shall conduct a hearing to determine the terms and  
22 conditions of supervised parole for the sex offender. The  
23 board may consider any relevant factors, including:

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

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

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

6 (4) the danger to the community posed by the  
7 sex offender; and

8 (5) a risk and needs assessment regarding the  
9 sex offender, developed by the sex offender management board of  
10 the New Mexico sentencing commission or another appropriate  
11 entity, to be used by appropriate parole board personnel.

12 C. A risk and needs assessment performed pursuant  
13 to Subsection B of this section may only be performed by a  
14 licensed mental health clinician who has a contract with the  
15 human services department and who shall administer a dynamic  
16 evaluation instrument that has specific relevance to evaluating  
17 sex offenders and that has been validated. The sex offender  
18 and the attorney general may also submit an independent  
19 assessment at the party's own expense.

20 [~~G.~~] D. When a sex offender has served the initial  
21 five years of [supervised] parole, [and at two and one-half  
22 year intervals thereafter] the board shall review the duration  
23 of the sex offender's [supervised] parole. If parole is  
24 extended beyond five years, the board shall review the sex  
25 offender's parole duration at two and one-half year intervals

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1 thereafter. At each review hearing, the attorney general shall  
2 bear the burden of proving by clear and convincing evidence  
3 that the sex offender should remain on parole. To meet this  
4 burden, the attorney general must show that the sex offender  
5 has not progressed with treatment or rehabilitation or has  
6 otherwise failed to comply with conditions of release, taking  
7 into consideration victim notification pursuant to Section  
8 31-26-12 NMSA 1978.

9 ~~[D-]~~ E. The board may order a sex offender released  
10 on parole to abide by reasonable terms and conditions of  
11 parole, 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) a parole agreement by the sex offender not  
17 to use alcohol or drugs;

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

20 (5) being subject to alcohol testing, drug  
21 testing or polygraph examinations used to determine if the sex  
22 offender is in compliance with the terms and conditions of the  
23 sex offender's parole. Any polygraph examinations that

24 implicate potential criminal liability and that are required  
25 for parole compliance shall be accompanied by a use immunity

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1 agreement.

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

11           ~~[F-]~~ G. The board shall notify the chief public  
12 defender of an upcoming parole hearing for a sex offender  
13 pursuant to Subsection ~~[G]~~ D of this section, and the chief  
14 public defender shall make representation available to the sex  
15 offender at the parole hearing if the parolee does not obtain  
16 private counsel.

17           ~~[G-]~~ H. If the board finds that a sex offender has  
18 violated the terms and conditions of the sex offender's parole,  
19 the board may revoke the sex offender's parole or may modify  
20 the terms and conditions of parole. If a sex offender's parole  
21 is revoked and the sex offender is re-incarcerated, the board  
22 shall review the sex offender's eligibility to be released at  
23 one-year intervals thereafter. At no point shall a sex  
24 offender remain incarcerated for a period of more than five  
25 years without a full review hearing pursuant to Subsection D of

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1 this section.

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

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

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

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

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

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

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

24 (6) child solicitation by electronic  
25 communication device, as provided in Section 30-37-3.2 NMSA

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1978."