

West's New Mexico Statutes Annotated

Chapter 31. Criminal Procedure

Article 20. Sentencing (Refs & Annos)

N. M. S. A. 1978, § 31-20-5.2

§ 31-20-5.2. Sex offenders; period of probation; terms and conditions of probation

Currentness

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 requires the sex offender to serve an indeterminate period of supervised probation for a period of not less than five years and not in excess of twenty years. A sex offender's period of supervised probation may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on probation. Prior to placing a sex offender on probation, the district court shall conduct a hearing to determine the terms and conditions of supervised probation for the sex offender. The district court may consider any relevant factors, including:

- (1) the nature and circumstances of the offense for which the sex offender was convicted or adjudicated;
- (2) the nature and circumstances of a prior sex offense committed by the sex offender;
- (3) rehabilitation efforts engaged in by the sex offender, including participation in treatment programs while incarcerated or elsewhere;
- (4) the danger to the community posed by the sex offender; and
- (5) a risk and needs assessment regarding the sex offender, developed by the sex offender management board of the New Mexico sentencing commission or another appropriate entity, to be used by appropriate district court personnel.

B. The New Mexico Corrections Department shall notify the District Attorney's Office, and the District Attorney's Office shall petition the A district court ~~shall to~~ review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the New Mexico Corrections Department shall notify the District Attorney's Office, and the District Attorney's Office shall petition the district court ~~shall to~~ also review the duration of the sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.

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

- (1) being subject to intensive supervision by a probation officer of the corrections department;
- (2) participating in an outpatient or inpatient sex offender treatment program;

- (3) a probationary agreement by the sex offender not to use alcohol or drugs;
- (4) a probationary agreement by the sex offender not to have contact with certain persons or classes of persons; and
- (5) being subject to alcohol testing, drug testing or polygraph examinations used to determine if the sex offender is in compliance with the terms and conditions of his probation.

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

E. If the district court finds that a sex offender has violated the terms and conditions of his probation, the district court may revoke his probation or may order additional terms and conditions of probation.

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

- (1) kidnapping, as provided in [Section 30-4-1 NMSA 1978](#), when committed with intent to inflict a sexual offense upon the victim;
- (2) criminal sexual penetration in the first, second or third degree, as provided in [Section 30-9-11 NMSA 1978](#);
- (3) criminal sexual contact of a minor in the second or third degree, as provided in [Section 30-9-13 NMSA 1978](#);
- (4) sexual exploitation of children in the second degree, as provided in [Section 30-6A-3 NMSA 1978](#); or
- (5) sexual exploitation of children by prostitution in the first or second degree, as provided in [Section 30-6A-4 NMSA 1978](#).

Credits

Added by L. 2003, Sp.Sess., Ch. 1, § 7.

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NMSA 1978, § [31-20-5.2](#), NM ST § [31-20-5.2](#)

Current through the end of the First Regular and Special Sessions of the 53rd Legislature (2017).
