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**UNDERSTANDING THE ISSUE OF “STACKED” SENTENCING
AND NEW MEXICO’S 2023 SECOND CHANCE ACT**

In 2023, the New Mexico Legislature passed SB 64 (Second Chance Act), which ended life without parole as a sentencing option for children and created earlier parole eligibility for children sentenced to prison.

The Second Chance Act provides that, for children sentenced as adults, parole eligibility occurs at either 15, 20, or 25 years into a sentence, depending on the crime of conviction. The 2023 law only creates an opportunity for parole. Before they can be granted parole, a candidate must demonstrate to the parole board that they have been fully rehabilitated to be released to the community.

The United States is the only country in the world that sentences children to die in prison. New Mexico’s Second Chance Act came in the wake of multiple Supreme Court decisions recognizing scientific evidence that juvenile brain development requires a “meaningful opportunity for release based on demonstrated maturity and rehabilitation.”¹ Because children have such great rehabilitative potential, sentences that deprive children of this meaningful opportunity for release violate the Constitution’s prohibition on cruel and unusual punishment.

In New Mexico, the practice of “stacked” sentencing (imposing many sentences run consecutively after one another) has been a heavily relied upon tool for guaranteeing that a child would spend their entire lives in prison.² Such extreme “stacked” sentences have been found to hold the same constitutional deficits as a true life without parole sentence. The Legislature took great care to ensure that children serving this kind of unconstitutional sentence not be excluded from the policies it was adopting, and the Second Chance Act was written to specifically extend parole eligibility to children with consecutive sentences.

¹ See *Graham v. Florida*, 560 U.S. 48, 75 (2010); *Miller v. Alabama*, 567 U.S. 460, 479-80 (2012); *Montgomery v. Louisiana*, 577 U.S. 190 (2016).

² New Mexico outlawed the death penalty for children in 1975. 1975 N.M. Laws, ch. 320, §5. Life without parole was not created as a sentencing option in New Mexico until 2009, when the sentence replaced the death penalty following its abolition by the Legislature. This meant that between 1975 and 2009, judges sentencing children as adults for serious crimes crafted “de facto” life without parole sentences by running many sentences one after another to ensure no meaningful or realistic opportunity for release ever arose.

The law reads:

Parole eligibility and a parole hearing shall occur whether the offender is serving concurrent or consecutive sentences for multiple convictions arising from the same case.³

This provision was adopted to ensure that children given long, stacked sentences be provided the constitutionally mandated “meaningful opportunity for release.”

From the time the bill became law in July 2023 until August 2025, the New Mexico Adult Parole Board (the Board) and the New Mexico Corrections Department (Corrections) properly understood and implemented these provisions. In the months following the law’s enactment in July of 2023, they reviewed the cases of 25 people across the state and granted parole to nine who demonstrated significant rehabilitation and readiness to reenter society. Some of those granted parole and released were serving these extreme “stacked” sentences and released under the consecutive sentence provision described above.

Today, those who have been released under the law live across several different counties in New Mexico, contributing positively to the community, as licensed professionals in the arts, peer support, and substance abuse counseling, as first time homeowners, and college graduates. A [January 11, 2025 feature in the *Santa Fe New Mexican*](#) profiled these individuals and their lives since their release from prison.

In August 2025, the Board heard the first “rehearing” of a candidate originally denied parole but heard again under the review provisions set forth in the 2023 law. The Board found the candidate fit for parole. The candidate has served 30 years in prison for crimes committed when he was 17. For over two decades, he has strived to make amends — to heal, to grow, and to help others do the same. The man he is today bears no resemblance to the child who entered the system over 30 years ago.

Despite finding him fit to re-enter society and granting his parole, Corrections and the Board have kept him in custody on a 22-year consecutive sentence. When advocates inquired about this result and the departure from both previous practice and the unambiguous language of the

³ This particular provision of the law governing applicability to consecutive sentences was discussed at length in Senate Judiciary Committee on February 17, 2023, in a hearing in which clarifying amendments were adopted. These clarifying amendments followed lengthy discussion with victims’ advocates and the NMDOJ in order to ensure that the law (1) authorize the necessary early release of children sentenced as adults to consecutive adult sentences stacked one after the other, while (2) preserve the NMCD and NMAPB practice of artificially “paroling” prisoners from one sentence into the next when consecutive or concurrent sentences arise from two or more distinct criminal cases (e.g. for crimes committed while in prison). The amendment and final adopted version of the provision read: “Parole eligibility and a parole hearing shall occur whether the offender is serving concurrent or consecutive sentences for multiple convictions ~~crimes arising from the same case. If the offender is serving sentences for convictions arising from multiple cases, the time counted toward parole eligibility for a particular case does not begin to accrue until that sentence for the case is being served.~~”

statute, Corrections and the Board requested the analysis of the New Mexico Department of Justice (NMDOJ).

On October 7, 2025, the NMDOJ issued an advisory letter ratifying the agencies' decision to keep this individual in prison on his consecutive sentence despite being granted parole. The Board and Corrections then began to review the cases of individuals previously released under the law for possible rearrest and reincarceration under the NMDOJ's Advisory Letter.

It is essential that the Legislature retain its authority to draft laws that are interpreted and applied as written, without interference from the Attorney General. The Advisory Letter offers an incorrect analysis of law. It departs starkly from the plain language of the statute, ignores the clear legislative intent, and would create absurd results.⁴ This incorrect analysis represents an invasion of both legislative and judicial powers by the NMDOJ and a threat to the freedom of people who were lawfully released from prison and have been living their lives and contributing positively to our communities for two years now. (De)serving Life expresses gratitude to the Courts Corrections and Justice Committee for stewarding a conversation about this pressing issue and its widespread consequences.

(De)serving Life is a 501(c)(3) nonprofit organization that was founded after the Second Chance Act became law. The organization provides parole advocacy and re-entry support services to people serving life and long sentences for crimes committed as children and young adults. We have a small, dedicated staff of lawyers, advocates, and peer support staff.

⁴ The accepted canons of statutory construction prohibit these outcomes. *See State v. Maestas*, 2007-NMSC-001, ¶ 22 (Courts must “give effect to legislative intent by construing statutes to avoid absurd results.”). One notable absurd result from the NMDOJ interpretation is that a child convicted of first-degree willful and deliberate murder and sentenced to life in prison would be eligible for release after 20 years, while a child condemned to a lifetime in prison under stacked terms for a non-homicide offense would never have a chance at release—only a hollow transfer from one sentence to the next.