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SENATE BILL 563

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Leonard Lee Rawson

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE AMOUNT PAID BY
OFFENDERS FOR SUPERVISED PROBATION AND PAROLE SERVICES;
REQUIRING OFFENDERS WHO PARTICIPATE IN A COMMUNITY CORRECTIONS
PROGRAM TO MAKE A CO-PAYMENT; AMENDING SECTIONS OF THE NMSA
1978.

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

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963,
Chapter 303, Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
SENTENCE.--The magistrate, metropolitan or district court shall
attach to its order deferring or suspending sentence [~~such~~]
reasonable conditions as it may deem necessary to ensure that
the defendant will observe the laws of the United States and
the various states and the ordinances of any municipality. The

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1 defendant upon conviction shall be required to reimburse a law
2 enforcement agency or local crime stopper program for the
3 amount of any reward paid by the agency or program for
4 information leading to his arrest, prosecution or conviction,
5 but in no event shall reimbursement to the crime stopper
6 program preempt restitution to victims pursuant to the
7 provisions of Section 31-17-1 NMSA 1978. The defendant upon
8 conviction shall be required to pay the actual costs of his
9 supervised probation service to the adult probation and parole
10 division of the corrections department or appropriate
11 responsible agency for deposit to the corrections department
12 intensive supervision fund not exceeding [~~one thousand twenty~~
13 ~~dollars (\$1,020)~~] one thousand eight hundred dollars (\$1,800)
14 annually to be paid in monthly installments of not less than
15 [~~fifteen dollars (\$15.00)~~] twenty-five dollars (\$25.00) and not
16 more than [~~eighty-five dollars (\$85.00), subject to~~
17 ~~modification, upon court approval~~] one hundred fifty dollars
18 (\$150), as set by the appropriate district supervisor of the
19 adult probation and parole division [~~or the local supervisor of~~
20 ~~the responsible agency on the basis of changed financial~~
21 ~~circumstances, and may be required~~], based upon the financial
22 circumstances of the defendant. The defendant's payment of the
23 supervised probation costs shall not be waived unless the court
24 holds an evidentiary hearing and finds that the defendant is
25 unable to pay the costs. If the court waives the defendant's

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1 payment of the supervised probation costs and the defendant's
2 financial circumstances subsequently change so that the
3 defendant is able to pay the costs, the appropriate district
4 supervisor of the adult probation and parole division shall
5 advise the court and the court shall hold an evidentiary
6 hearing to determine whether the waiver should be rescinded.

7 The court may also require the defendant to:

8 A. ~~[to]~~ provide for the support of ~~[any]~~ persons
9 for whose support he is legally responsible;

10 B. ~~[to]~~ undergo available medical or psychiatric
11 treatment and ~~[to]~~ enter and remain in a specified institution
12 when required for that purpose;

13 C. ~~[to]~~ be placed on probation under the
14 supervision, guidance or direction of the adult probation and
15 parole division ~~[of the corrections department]~~ for a term not
16 to exceed five years;

17 D. ~~[to]~~ serve a period of time in volunteer labor
18 to be known as "community service". The type of labor and
19 period of service shall be at the sole discretion of the court;
20 provided that ~~[any]~~ a person receiving community service shall
21 be immune from any civil liability other than gross negligence
22 arising out of the community service, and ~~[any]~~ a person who
23 performs community service pursuant to court order or ~~[any]~~ a
24 criminal diversion program shall not be entitled to ~~[any]~~
25 wages, shall not be considered an employee ~~[for any purpose]~~

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1 and shall not be entitled to workers' compensation,
2 unemployment benefits or any other benefits otherwise provided
3 by law. As used in this subsection, "community service" means
4 ~~[any]~~ labor that benefits the public at large or ~~[any]~~ a
5 public, charitable or educational entity or institution;

6 E. ~~[to]~~ make a contribution of not less than ten
7 dollars (\$10.00) and not more than one hundred dollars (\$100),
8 to be paid in monthly installments of not less than five
9 dollars (\$5.00), to a local crime stopper program or a local
10 drug abuse resistance education program that operates in the
11 territorial jurisdiction of the court ~~[If there is no program~~
12 ~~in that area, the contribution shall be made to the crime~~
13 ~~stoppers commission]; and~~

14 F. ~~[to]~~ satisfy any other conditions reasonably
15 related to his rehabilitation."

16 Section 2. Section 31-21-10 NMSA 1978 (being Laws 1980,
17 Chapter 28, Section 1, as amended) is amended to read:

18 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

19 A. An inmate of an institution who was sentenced to
20 life imprisonment as the result of the commission of a capital
21 felony, who was convicted of three violent felonies and
22 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
23 or who was convicted of two violent sexual offenses and
24 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
25 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a

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1 parole hearing after he has served thirty years of his
2 sentence. Before ordering the parole of an inmate sentenced to
3 life imprisonment, the board shall:

4 (1) interview the inmate at the institution
5 where he is committed;

6 (2) consider all pertinent information
7 concerning the inmate, including:

8 (a) the circumstances of the offense;

9 (b) mitigating and aggravating
10 circumstances;

11 (c) whether a deadly weapon was used in
12 the commission of the offense;

13 (d) whether the inmate is a habitual
14 offender;

15 (e) the reports filed under Section
16 31-21-9 NMSA 1978; and

17 (f) the reports of such physical and
18 mental examinations as have been made while in an institution;

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

21 (4) make a finding that the inmate is able and
22 willing to fulfill the obligations of a law-abiding citizen.

23 If parole is denied, the inmate sentenced to life
24 imprisonment shall again become entitled to a parole hearing at
25 two-year intervals. The board may, on its own motion, reopen

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1 any case in which a hearing has already been granted and parole
2 denied.

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

9 C. Except for sex offenders as provided in Section
10 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
11 second or third degree felony and who has served the sentence
12 of imprisonment imposed by the court in an institution
13 designated by the corrections department shall be required to
14 undergo a two-year period of parole. An inmate who was
15 convicted of a fourth degree felony and who has served the
16 sentence of imprisonment imposed by the court in an institution
17 designated by the corrections department shall be required to
18 undergo a one-year period of parole. During the period of
19 parole, the person shall be under the guidance and supervision
20 of the board.

21 D. Every person while on parole shall remain in the
22 legal custody of the institution from which he was released,
23 but shall be subject to the orders of the board. The board
24 shall furnish to each inmate as a prerequisite to his release
25 under its supervision a written statement of the conditions of

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1 parole that shall be accepted and agreed to by the inmate as
2 evidenced by his signature affixed to a duplicate copy to be
3 retained in the files of the board. The board shall also
4 require as a prerequisite to release the submission and
5 approval of a parole plan. If an inmate refuses to affix his
6 signature to the written statement of the conditions of his
7 parole or does not have an approved parole plan, he shall not
8 be released and shall remain in the custody of the institution
9 in which he has served his sentence, excepting parole, until
10 such time as the period of parole he was required to serve,
11 less meritorious deductions, if any, expires, at which time he
12 shall be released from that institution without parole, or
13 until such time that he evidences his acceptance and agreement
14 to the conditions of parole as required or receives approval
15 for his parole plan or both. Time served from the date that an
16 inmate refuses to accept and agree to the conditions of parole
17 or fails to receive approval for his parole plan shall reduce
18 the period, if any, to be served under parole at a later date.
19 If the district court has ordered that the inmate make
20 restitution to a victim as provided in Section 31-17-1 NMSA
21 1978, the board shall include restitution as a condition of
22 parole. The board shall also personally apprise the inmate of
23 the conditions of parole and his duties relating thereto.

24 E. When a person on parole has performed the
25 obligations of his release for the period of parole provided in

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1 this section, the board shall make a final order of discharge
2 and issue him a certificate of discharge.

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

6 (1) to pay the actual costs of his parole
7 services to the adult probation and parole division of the
8 corrections department for deposit to the corrections
9 department intensive supervision fund not exceeding [~~one~~
10 ~~thousand twenty dollars (\$1,020)~~] one thousand eight hundred
11 dollars (\$1,800) annually to be paid in monthly installments of
12 not less than [~~fifteen dollars (\$15.00)~~] twenty-five dollars
13 (\$25.00) and not more than [~~eighty-five dollars (\$85.00)~~],
14 ~~subject to modification by the adult probation and parole~~
15 ~~division on the basis of changed financial circumstances~~] one
16 hundred fifty dollars (\$150), as set by the appropriate
17 district supervisor of the adult probation and parole division,
18 based upon the financial circumstances of the defendant. The
19 defendant's payment of the supervised parole costs shall not be
20 waived unless the court holds an evidentiary hearing and finds
21 that the defendant is unable to pay the costs. If the court
22 waives the defendant's payment of the supervised parole costs
23 and the defendant's financial circumstances subsequently change
24 so that the defendant is able to pay the costs, the appropriate
25 district supervisor of the adult probation and parole division

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1 shall advise the court and the court shall hold an evidentiary
2 hearing to determine whether the waiver should be rescinded;
3 and

4 (2) to reimburse a law enforcement agency or
5 local crime stopper program for the amount of any reward paid
6 by the agency or program for information leading to his arrest,
7 prosecution or conviction.

8 G. The provisions of this section shall apply to
9 all inmates except geriatric, permanently incapacitated and
10 terminally ill inmates eligible for the medical and geriatric
11 parole program as provided by the Parole Board Act."

12 Section 3. Section 33-9-3 NMSA 1978 (being Laws 1983,
13 Chapter 202, Section 3, as amended) is amended to read:

14 "33-9-3. COMMUNITY CORRECTIONS GRANT FUND--ESTABLISHED--
15 CO-PAYMENTS.--

16 A. There is created in the state treasury a special
17 fund to be known as the "community corrections grant fund".
18 All money appropriated to the fund or accruing to it as a
19 result of gift, deposit, investments or other sources shall not
20 be transferred to another fund or encumbered or disbursed in
21 any manner except as provided in the Adult Community
22 Corrections Act. The fund shall be for the purpose of
23 providing programs and services for the diversion of criminal
24 offenders to community-based settings.

25 B. The department shall require criminal offenders

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1 who participate in a program and who receive services to make a
2 co-payment to offset the cost of the services. The amount of
3 the co-payment shall be based upon the offender's ability to
4 pay. The department shall collect the co-payments and on a
5 monthly basis deliver them to the state treasurer for deposit
6 in the community corrections grant fund."

7 Section 4. APPLICABILITY.--The provisions of this act
8 apply to persons convicted of a criminal offense on or after
9 July 1, 2004.

10 Section 5. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2004.

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