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SENATE BILL 528

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Steven P. Neville

AN ACT

RELATING TO SEX OFFENSES AGAINST CHILDREN; RESPONDING TO
JESSICA'S LAW; INCREASING PENALTIES FOR CRIMINAL SEXUAL
PENETRATION OF A CHILD UNDER THIRTEEN YEARS OF AGE; INCREASING
MANDATORY MINIMUM IMPRISONMENT FOR CRIMINAL SEXUAL PENETRATION
OF A CHILD THIRTEEN TO EIGHTEEN YEARS OF AGE; REQUIRING
ELECTRONIC MONITORING OF CERTAIN SEX OFFENDERS ON PAROLE.

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

Section 1. Section 30-9-11 NMSA 1978 (being Laws 1975,
Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and
intentional causing of a person to engage in sexual
intercourse, cunnilingus, fellatio or anal intercourse or the
causing of penetration, to any extent and with any object, of

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1 the genital or anal openings of another, whether or not there
2 is any emission.

3 B. Criminal sexual penetration does not include
4 medically indicated procedures.

5 C. Criminal sexual penetration in the first degree
6 consists of all criminal sexual penetration perpetrated:

- 7 (1) on a child under thirteen years of age; or
8 (2) by the use of force or coercion that
9 results in great bodily harm or great mental anguish to the
10 victim.

11 Whoever commits criminal sexual penetration in the first
12 degree is guilty of a first degree felony. Whoever commits
13 criminal sexual penetration in the first degree when the victim
14 is a child who is under thirteen years of age is guilty of a
15 first degree felony for criminal sexual penetration of a child.

16 D. Criminal sexual penetration in the second degree
17 consists of all criminal sexual penetration perpetrated:

- 18 (1) on a child thirteen to eighteen years of
19 age [~~when the perpetrator is in a position of authority over~~
20 ~~the child and uses this authority to coerce the child to~~
21 ~~submit~~];

22 (2) on an inmate confined in a correctional
23 facility or jail when the perpetrator is in a position of
24 authority over the inmate;

- 25 (3) by the use of force or coercion that

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1 results in personal injury to the victim;

2 (4) by the use of force or coercion when the
3 perpetrator is aided or abetted by one or more persons;

4 (5) in the commission of any other felony; or

5 (6) when the perpetrator is armed with a
6 deadly weapon.

7 Whoever commits criminal sexual penetration in the second
8 degree is guilty of a second degree felony. Whoever commits
9 criminal sexual penetration in the second degree when the
10 victim is a child who is thirteen to eighteen years of age is
11 guilty of a second degree felony for a sexual offense against a
12 child and, notwithstanding the provisions of Section 31-18-15
13 NMSA 1978, shall be sentenced to a minimum term of imprisonment
14 of [~~three~~] seven years, which shall not be suspended or
15 deferred. The imposition of a minimum, mandatory term of
16 imprisonment pursuant to the provisions of this subsection
17 shall not be interpreted to preclude the imposition of
18 sentencing enhancements pursuant to the provisions of Sections
19 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

20 E. Criminal sexual penetration in the third degree
21 consists of all criminal sexual penetration perpetrated through
22 the use of force or coercion.

23 Whoever commits criminal sexual penetration in the third
24 degree is guilty of a third degree felony. [~~Whoever commits~~
25 ~~criminal sexual penetration in the third degree when the victim~~

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1 ~~is a child who is thirteen to eighteen years of age is guilty~~
2 ~~of a third degree felony for a sexual offense against a child.]~~

3 F. Criminal sexual penetration in the fourth degree
4 consists of all criminal sexual penetration:

5 (1) not defined in Subsections C through E of
6 this section perpetrated on a child thirteen to sixteen years
7 of age when the perpetrator is at least eighteen years of age
8 and is at least four years older than the child and not the
9 spouse of that child; or

10 (2) perpetrated on a child thirteen to
11 eighteen years of age when the perpetrator, who is a licensed
12 school employee, an unlicensed school employee, a school
13 contract employee, a school health service provider or a school
14 volunteer, and who is at least eighteen years of age and is at
15 least four years older than the child and not the spouse of
16 that child, learns while performing services in or for a school
17 that the child is a student in a school.

18 Whoever commits criminal sexual penetration in the fourth
19 degree is guilty of a fourth degree felony."

20 Section 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
21 Chapter 216, Section 4, as amended) is amended to read:

22 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
23 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
24 DEDUCTIONS.--

25 A. If a person is convicted of a noncapital felony,

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1 the basic sentence of imprisonment is as follows:

2 (1) for a first degree felony resulting in the
3 death of a child, life imprisonment;

4 (2) for a first degree felony for criminal
5 sexual penetration of a child, life imprisonment;

6 [~~(2)~~] (3) for a first degree felony, eighteen
7 years imprisonment;

8 [~~(3)~~] (4) for a second degree felony resulting
9 in the death of a human being, fifteen years imprisonment;

10 [~~(4)~~] (5) for a second degree felony for a
11 sexual offense against a child, fifteen years imprisonment;

12 [~~(5)~~] (6) for a second degree felony, nine
13 years imprisonment;

14 [~~(6)~~] (7) for a third degree felony resulting
15 in the death of a human being, six years imprisonment;

16 [~~(7)~~] (8) for a third degree felony for a
17 sexual offense against a child, six years imprisonment;

18 [~~(8)~~] (9) for a third degree felony, three
19 years imprisonment; or

20 [~~(9)~~] (10) for a fourth degree felony,
21 eighteen months imprisonment.

22 B. The appropriate basic sentence of imprisonment
23 shall be imposed upon a person convicted and sentenced pursuant
24 to Subsection A of this section, unless the court alters the
25 sentence pursuant to the provisions of Section 31-18-15.1,

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1 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

2 C. The court shall include in the judgment and
3 sentence of each person convicted and sentenced to imprisonment
4 in a corrections facility designated by the corrections
5 department authority for a period of parole to be served in
6 accordance with the provisions of Section 31-21-10 NMSA 1978
7 after the completion of any actual time of imprisonment and
8 authority to require, as a condition of parole, the payment of
9 the costs of parole services and reimbursement to a law
10 enforcement agency or local crime stopper program in accordance
11 with the provisions of that section. The period of parole
12 shall be deemed to be part of the sentence of the convicted
13 person in addition to the basic sentence imposed pursuant to
14 Subsection A of this section together with alterations, if any,
15 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
16 31-18-16.1 or 31-18-17 NMSA 1978.

17 D. When a court imposes a sentence of imprisonment
18 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
19 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
20 basic sentence of imprisonment provided pursuant to the
21 provisions of Subsection A of this section, the period of
22 parole shall be served in accordance with the provisions of
23 Section 31-21-10 NMSA 1978 for the degree of felony for the
24 basic sentence for which the inmate was convicted. For the
25 purpose of designating a period of parole, a court shall not

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1 consider that the basic sentence of imprisonment was suspended
2 or deferred and that the inmate served a period of imprisonment
3 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
4 31-18-16.1 or 31-18-17 NMSA 1978.

5 E. The court may, in addition to the imposition of
6 a basic sentence of imprisonment, impose a fine not to exceed:

7 (1) for a first degree felony resulting in the
8 death of a child, seventeen thousand five hundred dollars
9 (\$17,500);

10 (2) for a first degree felony for criminal
11 sexual penetration of a child, seventeen thousand five hundred
12 dollars (\$17,500);

13 [~~(2)~~] (3) for a first degree felony, fifteen
14 thousand dollars (\$15,000);

15 [~~(3)~~] (4) for a second degree felony resulting
16 in the death of a human being, twelve thousand five hundred
17 dollars (\$12,500);

18 [~~(4)~~] (5) for a second degree felony for a
19 sexual offense against a child, twelve thousand five hundred
20 dollars (\$12,500);

21 [~~(5)~~] (6) for a second degree felony, ten
22 thousand dollars (\$10,000);

23 [~~(6)~~] (7) for a third degree felony resulting
24 in the death of a human being, five thousand dollars (\$5,000);

25 [~~(7)~~] (8) for a third degree felony for a

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1 sexual offense against a child, five thousand dollars (\$5,000);
2 or

3 [~~(8)~~] (9) for a third or fourth degree felony,
4 five thousand dollars (\$5,000).

5 F. When the court imposes a sentence of
6 imprisonment for a felony offense, the court shall indicate
7 whether or not the offense is a serious violent offense, as
8 defined in Section 33-2-34 NMSA 1978. The court shall inform
9 an offender that the offender's sentence of imprisonment is
10 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
11 and 33-2-38 NMSA 1978. If the court fails to inform an
12 offender that the offender's sentence is subject to those
13 provisions or if the court provides the offender with erroneous
14 information regarding those provisions, the failure to inform
15 or the error shall not provide a basis for a writ of habeas
16 corpus.

17 G. No later than October 31 of each year, the New
18 Mexico sentencing commission shall provide a written report to
19 the secretary of corrections, all New Mexico criminal court
20 judges, the administrative office of the district attorneys and
21 the chief public defender. The report shall specify the
22 average reduction in the sentence of imprisonment for serious
23 violent offenses and nonviolent offenses, as defined in Section
24 33-2-34 NMSA 1978, due to meritorious deductions earned by
25 prisoners during the previous fiscal year pursuant to the

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1 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
2 NMSA 1978. The corrections department shall allow the
3 commission access to documents used by the department to
4 determine earned meritorious deductions for prisoners."

5 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
6 Chapter 28, Section 1, as amended) is amended to read:

7 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

8 A. An inmate of an institution who was sentenced to
9 life imprisonment as the result of the commission of a capital
10 felony, who was sentenced to life imprisonment as the result of
11 a conviction for a first degree felony resulting in the death
12 of a child or for a first degree felony for criminal sexual
13 penetration of a child, who was convicted of three violent
14 felonies and sentenced pursuant to Sections 31-18-23 and
15 31-18-24 NMSA 1978 or who was convicted of two violent sexual
16 offenses and sentenced pursuant to Subsection A of Section
17 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes
18 eligible for a parole hearing after [~~he~~] the inmate has served
19 thirty years of [~~his~~] the inmate's sentence. Before ordering
20 the parole of an inmate sentenced to life imprisonment, the
21 board shall:

22 (1) interview the inmate at the institution
23 where [~~he~~] the inmate is committed;

24 (2) consider all pertinent information
25 concerning the inmate, including:

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1 (a) the circumstances of the offense;

2 (b) mitigating and aggravating

3 circumstances;

4 (c) whether a deadly weapon was used in
5 the commission of the offense;

6 (d) whether the inmate is a habitual
7 offender;

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

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

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

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

16 If parole is denied, the inmate sentenced to life
17 imprisonment shall again become entitled to a parole hearing at
18 two-year intervals. The board may, on its own motion, reopen
19 any case in which a hearing has already been granted and parole
20 denied.

21 B. Unless the board finds that it is in the best
22 interest of society and the parolee to reduce the period of
23 parole, a person who was convicted of a capital felony shall be
24 required to undergo a minimum period of parole of five years.

25 During the period of parole, the person shall be under the

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1 guidance and supervision of the board.

2 C. Except for sex offenders as provided in Section
3 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
4 second or third degree felony and who has served the sentence
5 of imprisonment imposed by the court in an institution
6 designated by the corrections department shall be required to
7 undergo a two-year period of parole. An inmate who was
8 convicted of a fourth degree felony and who has served the
9 sentence of imprisonment imposed by the court in an institution
10 designated by the corrections department shall be required to
11 undergo a one-year period of parole. During the period of
12 parole, the person shall be under the guidance and supervision
13 of the board.

14 D. Every person while on parole shall remain in the
15 legal custody of the institution from which [~~he~~] the person was
16 released, but shall be subject to the orders of the board. The
17 board shall furnish to each inmate as a prerequisite to [~~his~~]
18 the inmate's release under its supervision a written statement
19 of the conditions of parole that shall be accepted and agreed
20 to by the inmate as evidenced by [~~his~~] the inmate's signature
21 affixed to a duplicate copy to be retained in the files of the
22 board. The board shall also require as a prerequisite to
23 release the submission and approval of a parole plan. If an
24 inmate refuses to affix [~~his~~] the inmate's signature to the
25 written statement of the conditions of [~~his~~] the inmate's

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

21 E. When a person on parole has performed the
22 obligations of [~~his~~] the person's release for the period of
23 parole provided in this section, the board shall make a final
24 order of discharge and issue [~~him~~] the person a certificate of
25 discharge.

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

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

24 (2) to reimburse a law enforcement agency or
25 local crime stopper program for the amount of any reward paid

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1 by the agency or program for information leading to [~~his~~] the
2 inmate's arrest, prosecution or conviction.

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

7 Section 4. Section 31-21-10.1 NMSA 1978 (being Laws
8 2003 (1st S.S.), Chapter 1, Section 9) is amended to read:

9 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND
10 CONDITIONS OF PAROLE.--

11 A. If the district court sentences a sex offender
12 to a term of incarceration in a facility designated by the
13 corrections department, the district court shall include a
14 provision in the judgment and sentence that specifically
15 requires the sex offender to serve an indeterminate period of
16 supervised parole for a period of not less than five years
17 and not in excess of twenty years. A sex offender's period
18 of supervised parole may be for a period of less than twenty
19 years if, at a review hearing provided for in Subsection B of
20 this section, the state is unable to prove that the sex
21 offender should remain on parole. Prior to placing a sex
22 offender on parole, the board shall conduct a hearing to
23 determine the terms and conditions of supervised parole for
24 the sex offender. The board may consider any relevant
25 factors, including:

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

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

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

8 (4) the danger to the community posed by the
9 sex offender; and

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

15 B. The board shall review the terms and
16 conditions of a sex offender's supervised parole at two and
17 one-half year intervals. When a sex offender has served the
18 initial five years of supervised parole, the board shall also
19 review the duration of the sex offender's supervised parole
20 at two and one-half year intervals. When a sex offender has
21 served the initial five years of supervised parole, at each
22 review hearing the state shall bear the burden of proving to
23 a reasonable certainty that the sex offender should remain on
24 parole.

25 C. The board may order a sex offender released on

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1 parole to abide by reasonable terms and conditions of parole,
2 including:

3 (1) being subject to intensive supervision
4 by a parole officer of the corrections department;

5 (2) participating in an outpatient or
6 inpatient sex offender treatment program;

7 (3) a parole agreement by the sex offender
8 not to use alcohol or drugs;

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

12 (5) being subject to alcohol testing, drug
13 testing or polygraph examinations used to determine if the
14 sex offender is in compliance with the terms and conditions
15 of [~~his~~] the sex offender's parole.

16 D. The board shall require electronic real time
17 monitoring of every sex offender released on parole for the
18 entire time the sex offender is on parole. The electronic
19 monitoring shall use global positioning system monitoring
20 technology or any successor technology that would give
21 continuous information on the sex offender's whereabouts and
22 enable law enforcement and the corrections department to
23 determine the real time position of a sex offender to a high
24 level of accuracy.

25 [~~D.~~] E. The board shall notify the chief public

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1 defender of an upcoming parole hearing for a sex offender,
2 and the chief public defender shall make representation
3 available to the sex offender at the parole hearing.

4 ~~[E-]~~ F. If the board finds that a sex offender
5 has violated the terms and conditions of ~~[his]~~ the sex
6 offender's parole, the board may revoke ~~[his]~~ the sex
7 offender's parole or may order additional terms and
8 conditions of parole.

9 ~~[F-]~~ G. The provisions of this section shall
10 apply to all sex offenders, except geriatric, permanently
11 incapacitated and terminally ill inmates eligible for the
12 medical and geriatric parole program as provided by the
13 Parole Board Act.

14 ~~[G-]~~ H. As used in this section, "sex offender"
15 means a person who is convicted of, pleads guilty to or
16 pleads nolo contendere to any one of the following offenses:

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

20 (2) criminal sexual penetration in the
21 first, second or third degree, as provided in Section 30-9-11
22 NMSA 1978;

23 (3) criminal sexual contact of a minor in
24 the second or third degree, as provided in Section 30-9-13
25 NMSA 1978;

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

3 (5) sexual exploitation of children by
4 prostitution in the first or second degree, as provided in
5 Section 30-6A-4 NMSA 1978."

6 Section 5. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2007.