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HOUSE BILL 439

**50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

INTRODUCED BY

Ray Begaye

AN ACT

RELATING TO SEX OFFENDERS; MODIFYING ELECTRONIC MONITORING REQUIREMENTS FOR SEX OFFENDERS TO PROVIDE FOR AREAS WHERE ELECTRONIC MONITORING IS NOT AVAILABLE AND TO ALLOW PASSIVE ELECTRONIC MONITORING; ALLOWING THE PAROLE BOARD TO DETERMINE, AFTER A HEARING, WHETHER ELECTRONIC MONITORING SHOULD CONTINUE OR BE SUSPENDED AS A PAROLE REQUIREMENT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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.--

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1           A. If the district court sentences a sex offender  
2 to a term of incarceration in a facility designated by the  
3 corrections department, the district court shall include a  
4 provision in the judgment and sentence that specifically  
5 requires the sex offender to serve an indeterminate period of  
6 supervised parole for a period of:

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

14                   (2) not less than five years and up to the  
15 natural life of the sex offender for the offense of aggravated  
16 criminal sexual penetration, criminal sexual penetration in the  
17 first or second degree, criminal sexual contact of a minor in  
18 the second or third degree or sexual exploitation of children  
19 by prostitution in the first or second degree.

20           A sex offender's period of supervised parole may be for a  
21 period of less than the maximum if, at a review hearing  
22 provided for in Subsection C of this section, the state is  
23 unable to prove that the sex offender should remain on parole.

24           B. Prior to placing a sex offender on parole, the  
25 board shall conduct a hearing to determine the terms and

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1 conditions of supervised parole for the sex offender. The  
2 board may consider any relevant factors, including:

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

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

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

10 (4) the danger to the community posed by the  
11 sex offender; and

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

16 C. When a sex offender has served the initial five  
17 years of supervised parole, and at two and one-half year  
18 intervals thereafter, the board shall review the duration of  
19 the sex offender's supervised parole. At each review hearing,  
20 the attorney general shall bear the burden of proving by clear  
21 and convincing evidence that the sex offender should remain on  
22 parole.

23 D. The board may order a sex offender released on  
24 parole to abide by reasonable terms and conditions of parole,  
25 including:

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

3 (2) participating in an outpatient or  
4 inpatient sex offender treatment program;

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

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

9 (5) being subject to alcohol testing, drug  
10 testing or polygraph examinations used to determine if the sex  
11 offender is in compliance with the terms and conditions of the  
12 sex offender's parole.

13 E. The board shall require electronic [~~real-time~~]  
14 monitoring of every sex offender released on parole [~~for the~~  
15 ~~entire time the sex offender is on parole~~]; provided that  
16 electronic monitoring shall not be required if the technology  
17 is not available in the area where the sex offender is to be  
18 released. The electronic monitoring shall use global  
19 positioning system monitoring technology or any [~~successor~~]  
20 technology that would [~~give continuous~~] provide reliable  
21 information on the sex offender's whereabouts and enable law  
22 enforcement and the corrections department to determine the  
23 [~~real-time~~] position and movements of a sex offender to a high  
24 level of accuracy. If available, electronic monitoring shall  
25 be required for the entire time the sex offender is on parole

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1 unless the board, after hearing evidence and testimony at the  
2 parole review hearing provided in Subsection C of this section,  
3 determines that electronic monitoring should be suspended as a  
4 parole requirement.

5 F. The board shall notify the chief public defender  
6 of an upcoming parole hearing for a sex offender pursuant to  
7 Subsection C of this section, and the chief public defender  
8 shall make representation available to the sex offender at the  
9 parole hearing.

10 G. If the board finds that a sex offender has  
11 violated the terms and conditions of the sex offender's parole,  
12 the board may revoke the sex offender's parole or may modify  
13 the terms and conditions of parole.

14 H. The provisions of this section shall apply to  
15 all sex offenders, except geriatric, permanently incapacitated  
16 and terminally ill inmates eligible for the medical and  
17 geriatric parole program as provided by the Parole Board Act.

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

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

24 (2) aggravated criminal sexual penetration or  
25 criminal sexual penetration in the first, second or third

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1 degree, as provided in Section 30-9-11 NMSA 1978;

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

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

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

10 (6) child solicitation by electronic  
11 communication device, as provided in Section 30-37-3.2 NMSA  
12 1978."

13 SECTION 2. APPLICABILITY.--The provisions of this act  
14 shall apply to all sex offenders, as defined in Section  
15 31-21-10.1 NMSA 1978, who are in the custody of the corrections  
16 department or on parole on or after July 1, 2011.

17 SECTION 3. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2011.