

HOUSE BILL 270

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

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AN ACT

RELATING TO SEX OFFENDERS; PROVIDING THAT A LICENSED PSYCHOLOGIST PERFORM A RISK AND NEEDS ASSESSMENT FOR THE PAROLE BOARD'S CONSIDERATION; PROVIDING FOR PAROLE HEARINGS AFTER REVOCATION; 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.--

A. If the district court sentences a sex offender to a term of incarceration in a facility designated by the

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1 corrections department, the district court shall include a
2 provision in the judgment and sentence that specifically
3 requires the sex offender to serve an indeterminate period of
4 supervised parole for a period of:

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

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

18 A sex offender's period of supervised parole may be for a
19 period of less than the maximum if, at a review hearing
20 provided for in Subsection [~~E~~] D of this section, the state is
21 unable to prove that the sex offender should remain on parole.

22 B. Prior to placing a sex offender on parole, the
23 board shall conduct a hearing to determine the terms and
24 conditions of supervised parole for the sex offender. The
25 board may consider any relevant 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 the
11 sex offender, ~~[developed]~~ approved by the sex offender
12 management board of the New Mexico sentencing commission or
13 another appropriate entity, to be used by appropriate parole
14 board personnel.

15 C. A risk and needs assessment shall be performed
16 by a licensed psychologist who has a contract with the human
17 services department and who is certified to administer a
18 dynamic evaluation instrument that has specific relevance to
19 evaluating sex offenders and that has been validated. A sex
20 offender shall bear the expense of a risk and needs assessment,
21 provided that the expense shall not be imposed upon an indigent
22 person. Indigency shall be determined by the public defender
23 department.

24 ~~[G-]~~ D. When a sex offender has served the initial
25 five years of supervised parole, and at two and one-half year

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1 intervals thereafter, the board shall review the duration of
2 the sex offender's supervised parole. At each review hearing,
3 the attorney general shall bear the burden of proving by clear
4 and convincing evidence that the sex offender should remain on
5 parole.

6 ~~[D.]~~ E. The board may order a sex offender released
7 on parole to abide by reasonable terms and conditions of
8 parole, including:

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

11 (2) participating in an outpatient or
12 inpatient sex offender treatment program;

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

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

17 (5) being subject to alcohol testing, drug
18 testing or polygraph examinations used to determine if the sex
19 offender is in compliance with the terms and conditions of the
20 sex offender's parole.

21 ~~[E.]~~ F. The board shall require electronic real-
22 time monitoring of every sex offender released on parole for
23 the entire time the sex offender is on parole. The electronic
24 monitoring shall use global positioning system monitoring
25 technology or any successor technology that would give

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1 continuous information on the sex offender's whereabouts and
2 enable law enforcement and the corrections department to
3 determine the real-time position of a sex offender to a high
4 level of accuracy.

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

10 [G.] H. If the board finds that a sex offender has
11 violated the terms and conditions of [~~the sex offender's~~]
12 parole, the board may revoke the sex offender's parole or may
13 modify the terms and conditions of parole. When a sex
14 offender's parole is revoked and the offender is readmitted to
15 prison, the sex offender may request a parole hearing one year
16 after the date of revocation, and subsequent parole hearings
17 may be held at one-year intervals.

18 [H.] I. The provisions of this section shall apply
19 to all sex offenders, except geriatric, permanently
20 incapacitated and terminally ill inmates eligible for the
21 medical and geriatric parole program as provided by the Parole
22 Board Act.

23 [I.] J. As used in this section, "sex offender"
24 means a person who is convicted of, pleads guilty to or pleads
25 nolo contendere to any one of the following offenses:

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

4 (2) aggravated criminal sexual penetration or
5 criminal sexual penetration in the first, second or third
6 degree, as provided in Section 30-9-11 NMSA 1978;

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

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

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

15 (6) child solicitation by electronic
16 communication device, as provided in Section 30-37-3.2 NMSA
17 1978."

18 **SECTION 2. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is July 1, 2013.