

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 53

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT A SEX OFFENDER
REMAIN ON PAROLE FOR A PERIOD NOT TO EXCEED TWENTY YEARS;
ESTABLISHING FACTORS FOR THE PAROLE BOARD TO CONSIDER PRIOR TO
RELEASING A SEX OFFENDER FROM PAROLE; AMENDING AND ENACTING
SECTIONS OF THE PROBATION AND PAROLE ACT.

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

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

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

A. An inmate of an institution who was sentenced to
life imprisonment as the result of the commission of a capital
felony, who was convicted of three violent felonies and
sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
or who was convicted of two violent sexual offenses and

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1 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
2 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
3 parole hearing after he has served thirty years of his
4 sentence. Before ordering the parole of an inmate sentenced to
5 life imprisonment, the board shall:

6 (1) interview the inmate at the institution
7 where he is committed;

8 (2) consider all pertinent information
9 concerning the inmate, including:

10 (a) the circumstances of the offense;

11 (b) mitigating and aggravating
12 circumstances;

13 (c) whether a deadly weapon was used in
14 the commission of the offense;

15 (d) whether the inmate is a habitual
16 offender;

17 (e) the reports filed under Section
18 31-21-9 NMSA 1978; and

19 (f) the reports of such physical and
20 mental examinations as have been made while in ~~[prison]~~ an
21 institution;

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

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

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

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

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

24 D. Every person while on parole shall remain in the
25 legal custody of the institution from which he was released,

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

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1 shall also personally apprise the inmate of the conditions of
2 parole and his duties relating thereto.

3 E. When a person on parole has performed the
4 obligations of his release for the period of parole provided in
5 this section, the board shall make a final order of discharge
6 and issue him a certificate of discharge.

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

10 (1) to pay the actual costs of his parole
11 services to the adult probation and parole division of the
12 corrections department for deposit to the corrections
13 department intensive supervision fund not exceeding one
14 thousand twenty dollars (\$1,020) annually to be paid in monthly
15 installments of not less than fifteen dollars (\$15.00) and not
16 more than eighty-five dollars (\$85.00), subject to modification
17 by the adult probation and parole division on the basis of
18 changed financial circumstances; and

19 (2) to reimburse a law enforcement agency or
20 local crime stopper program for the amount of any reward paid
21 by the agency or program for information leading to his arrest,
22 prosecution or conviction.

23 G. The provisions of this section shall apply to
24 all inmates except geriatric, permanently incapacitated and
25 terminally ill inmates eligible for the medical and geriatric

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underscoring material = new
[bracketed material] = delete

1 parole program as provided by the Parole Board Act. "

2 Section 2. A new section of the Probation and Parole Act,
3 Section 31-21-10.1 NMSA 1978, is enacted to read:

4 "31-21-10.1. [NEW MATERIAL] SEX OFFENDERS-- PERIOD OF
5 PAROLE-- TERMS AND CONDITIONS OF PAROLE. --

6 A. Prior to the release on parole of a sex
7 offender, or at any subsequent parole hearing, the board shall
8 conduct a hearing to determine the duration, terms and
9 conditions of parole for the sex offender. Unless the board
10 orders otherwise, a sex offender's period of parole shall be
11 for a period not to exceed twenty years. The board may
12 consider any relevant factors, including:

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

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

17 (3) rehabilitation efforts engaged in by the
18 sex offender, including participation in treatment programs
19 while incarcerated or elsewhere; and

20 (4) the danger to the community posed by the
21 sex offender.

22 B. The board shall review the terms and conditions
23 of a sex offender's parole at four-year intervals. During a
24 review hearing, the state shall bear the burden of proving to
25 the board that a sex offender should remain on parole. The

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1 board may decide to continue a sex offender's parole, but may
2 determine that certain terms and conditions of parole are no
3 longer necessary.

4 C. The board may order a sex offender released on
5 parole to abide by reasonable terms and conditions of parole,
6 including:

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

9 (2) participating in an outpatient or
10 inpatient sex offender treatment program;

11 (3) an agreement by the sex offender not to
12 use alcohol or drugs;

13 (4) an agreement by the sex offender not to
14 have contact with certain persons or classes of persons; and

15 (5) being subject to alcohol testing, drug
16 testing, polygraph examinations or similar examinations used to
17 determine if the sex offender is in compliance with the terms
18 and conditions of his parole.

19 D. The board shall notify the chief public defender
20 of an upcoming parole hearing for a sex offender, and the chief
21 public defender shall represent the sex offender at the parole
22 hearing.

23 E. If the board finds that a sex offender has
24 violated the terms and conditions of his parole, the board may
25 revoke his parole or may order additional terms and conditions

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1 of parole.

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

6 G. As used in this section, "sex offender" means a
7 person who is convicted of, pleads guilty to or pleads nolo
8 contendere to any one of the following offenses:

9 (1) criminal sexual penetration in the first,
10 second or third degree, as provided in Section 30-9-11 NMSA
11 1978;

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

14 (3) sexual exploitation of children, as
15 provided in Section 30-6A-3 NMSA 1978. "

16 Section 3. EFFECTIVE DATE. --The effective date of the
17 provisions of this act is July 1, 2003.