

AN ACT

RELATING TO SEX OFFENDERS; CREATING A SEX OFFENDER MANAGEMENT BOARD WITHIN THE NEW MEXICO SENTENCING COMMISSION; PROVIDING DUTIES; REVISING THE ELEMENTS OF THE CRIME OF KIDNAPPING; PROVIDING INCREASED PENALTIES FOR CRIMINAL SEXUAL PENETRATION IN THE SECOND OR THIRD DEGREE WHEN THE VICTIM IS A CHILD THIRTEEN TO EIGHTEEN YEARS OF AGE; CREATING A NEW OFFENSE KNOWN AS CRIMINAL SEXUAL CONTACT OF A MINOR IN THE SECOND DEGREE; PROVIDING INCREASED PENALTIES FOR CRIMINAL SEXUAL CONTACT OF A MINOR IN THE THIRD DEGREE; PROVIDING MINIMUM, MANDATORY PENALTIES; PROVIDING THAT A SEX OFFENDER MAY BE PLACED ON PROBATION FOR A PERIOD OF UP TO TWENTY YEARS; ESTABLISHING FACTORS FOR THE DISTRICT COURT TO CONSIDER WHEN DETERMINING THE DURATION, TERMS AND CONDITIONS OF PROBATION; PROVIDING THAT A SEX OFFENDER MAY BE PLACED ON PAROLE FOR A PERIOD OF UP TO TWENTY YEARS; ESTABLISHING FACTORS FOR THE PAROLE BOARD TO CONSIDER WHEN DETERMINING THE DURATION, TERMS AND CONDITIONS OF PAROLE; PROVIDING CONFORMING AMENDMENTS TO EXISTING LAWS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 9, Article 3 NMSA 1978 is enacted to read:

"SEX OFFENDER MANAGEMENT BOARD--CREATION--MEMBERSHIP--

DUTIES.--

A. There is created within the New Mexico sentencing commission the "sex offender management board". Members of the sex offender management board who are not members of the New Mexico sentencing commission, whose membership is set forth in Section 9-3-10 NMSA 1978, shall not be voting members of the New Mexico sentencing commission.

B. The sex offender management board shall be composed of the following members:

- (1) the attorney general;
- (2) a district attorney appointed by the district attorneys association of New Mexico;
- (3) the chief public defender;
- (4) a district court judge appointed by the district court judge's association of New Mexico;
- (5) the secretary of corrections;
- (6) the secretary of health;
- (7) the secretary of children, youth and families;
- (8) one public member appointed by the governor who is a board member of a New Mexico victims organization;
- (9) two representatives appointed by the governor who are mental health professionals licensed to practice in New Mexico. One of the mental health

professionals shall be a member of the association for the treatment of sexual abusers and one shall be a juvenile sex offender treatment specialist;

(10) a representative appointed by the governor from the adult probation and parole division of the corrections department who has expertise in the supervision of sex offenders;

(11) a representative appointed by the governor from the law enforcement community who has expertise regarding sex offender community notification, registration, tracking and monitoring;

(12) a representative appointed by the governor who is affiliated with a civil liberties organization; and

(13) a representative appointed by the governor who is affiliated with a faith-based organization.

C. The sex offender management board shall report its findings and recommendations to the New Mexico sentencing commission on a quarterly basis. The New Mexico sentencing commission shall vote to approve, disapprove or revise the recommendations of the board.

D. The sex offender management board shall:

(1) hold meetings at times and for periods as the board deems necessary to accomplish its objectives, but shall meet at least eight times a year;

(2) develop and prescribe a standard procedure for the identification and evaluation of convicted sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for sex offenders. The board shall develop and recommend measures of success;

(3) develop and recommend guidelines and standards for the treatment of sex offenders that can be utilized by offenders who are placed on probation, incarcerated with the corrections department, placed on parole or placed in a community corrections program. The guidelines and standards shall include a monitoring process and a plan for developing treatment programs for sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(4) create a risk assessment-screening tool and program to assist sentencing of sex offenders, including determining the duration, terms and conditions of probation and parole for sex offenders;

(5) develop guidelines and standards for monitoring sex offenders who are undergoing evaluation or treatment, including behavioral monitoring;

(6) develop criteria for measuring a sex offender's progress in treatment programs. The parole board shall use the criteria approved by the New Mexico sentencing

commission to determine whether a sex offender may appropriately be discharged from parole;

(7) develop a standardized procedure for the identification and evaluation of juvenile sex offenders. The procedure shall include behavior management, monitoring, treatment and program compliance for juvenile sex offenders. The board shall develop and implement measures of success;

(8) develop and recommend guidelines and standards for the treatment of juvenile sex offenders who are placed on probation, committed to a state agency, placed on parole or placed in a community corrections program;

(9) research and analyze safety issues raised when sex offenders live in a community;

(10) study and consider the viability and legality of a civil commitment program for sex offenders;

(11) research and determine the feasibility and legality of implementing indeterminate sentencing for sex offenders;

(12) study the use of clinical polygraph testing as a means to evaluate sex offenders;

(13) evaluate sex offender treatment programs administered by state agencies and recommend changes, if needed, in those treatment programs; and

(14) review the provisions of the Sex Offender Notification and Registration Act and recommend

changes, if needed, to that act.

E. The members of the sex offender management board shall be paid pursuant to the Per Diem and Mileage Act and shall receive no other perquisite, compensation or allowance."

Section 2. Section 30-4-1 NMSA 1978 (being Laws 1963, Chapter 303, Section 4-1, as amended) is amended to read:

"30-4-1. KIDNAPPING.--

A. Kidnapping is the unlawful taking, restraining, transporting or confining of a person, by force, intimidation or deception, with intent:

(1) that the victim be held for ransom;

(2) that the victim be held as a hostage or shield and confined against his will;

(3) that the victim be held to service against the victim's will; or

(4) to inflict death, physical injury or a sexual offense on the victim.

B. Whoever commits kidnapping is guilty of a first degree felony, except that he is guilty of a second degree felony when he voluntarily frees the victim in a safe place and does not inflict physical injury or a sexual offense upon the victim."

Section 3. 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 the genital or anal openings of another, whether or not there is any emission.

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

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

(1) on a child under thirteen years of age;

or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

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

(1) on a child thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

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

(3) by the use of force or coercion that results in personal injury to the victim;

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

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

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

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

E. Criminal sexual penetration in the third degree

consists of all criminal sexual penetration perpetrated through the use of force or coercion.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony. Whoever commits criminal sexual penetration in the third degree when the victim is a child who is thirteen to eighteen years of age is guilty of a third degree felony for a sexual offense against a child.

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

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

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

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

Section 4. Section 30-9-13 NMSA 1978 (being Laws 1975, Chapter 109, Section 4, as amended) is amended to read:

"30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

(1) on a child under thirteen years of age;
or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;

(b) the perpetrator uses force or coercion that results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

(1) on a child under thirteen years of age;

or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(b) the perpetrator uses force or coercion which results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

(1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or

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

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony."

Section 5. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

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

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony, eighteen years imprisonment;

(2) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;

(3) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;

(4) for a second degree felony, nine years imprisonment;

(5) for a third degree felony resulting in the death of a human being, six years imprisonment;

(6) for a third degree felony for a sexual offense against a child, six years imprisonment;

(7) for a third degree felony, three years imprisonment; or

(8) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

C. The court shall include in the judgment and

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

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

or deferred and that the inmate served a period of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

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

(1) for a first degree felony, fifteen thousand dollars (\$15,000);

(2) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(3) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(4) for a second degree felony, ten thousand dollars (\$10,000);

(5) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);

(6) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000); or

(7) for a third or fourth degree felony, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform

an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners."

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Section 6. Section 31-20-5 NMSA 1978 (being Laws 1963, Chapter 303, Section 29-17, as amended) is amended to read:

"31-20-5. PLACING DEFENDANT ON PROBATION.--

A. When a person has been convicted of a crime for

which a sentence of imprisonment is authorized and when the magistrate, metropolitan or district court has deferred or suspended sentence, it shall order the defendant to be placed on probation for all or some portion of the period of deferment or suspension if the defendant is in need of supervision, guidance or direction that is feasible for the corrections department to furnish. Except for sex offenders as provided in Section 31-20-5.2 NMSA 1978, the total period of probation for district court shall not exceed five years and the total period of probation for the magistrate or metropolitan courts shall be no longer than the maximum allowable incarceration time for the offense or as otherwise provided by law.

B. If a defendant is required to serve a period of probation subsequent to a period of incarceration:

(1) the period of probation shall be served subsequent to any required period of parole, with the time served on parole credited as time served on the period of probation and the conditions of probation imposed by the court deemed as additional conditions of parole; and

(2) in the event that the defendant violates any condition of that parole, the parole board shall cause him to be brought before it pursuant to the provisions of Section 31-21-14 NMSA 1978 and may make any disposition authorized pursuant to that section and, if parole is revoked, the period

of parole served in the custody of a correctional facility shall not be credited as time served on probation."

Section 7. A new section, Section 31-20-5.2 NMSA 1978, is enacted to read:

"31-20-5.2. SEX OFFENDERS--PERIOD OF PROBATION--TERMS AND CONDITIONS OF PROBATION.--

A. When a district court defers imposition of a sentence for a sex offender, or suspends all or any portion of a sentence for a sex offender, the district court shall include a provision in the judgment and sentence that specifically requires the sex offender to serve an indeterminate period of supervised probation for a period of not less than five years and not in excess of twenty years. A sex offender's period of supervised probation may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on probation. Prior to placing a sex offender on probation, the district court shall conduct a hearing to determine the terms and conditions of supervised probation for the sex offender. The district court may consider any relevant factors, including:

(1) the nature and circumstances of the offense for which the sex offender was convicted or adjudicated;

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

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

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

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

B. A district court shall review the terms and conditions of a sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, the district court shall also review the duration of the sex offender's supervised probation at two and one-half year intervals. When a sex offender has served the initial five years of supervised probation, at each review hearing the state shall bear the burden of proving to a reasonable certainty that the sex offender should remain on probation.

C. The district court may order a sex offender placed on probation to abide by reasonable terms and conditions of probation, including:

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

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

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

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

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

D. The district court shall notify the sex offender's counsel of record of an upcoming probation hearing for a sex offender, and the sex offender's counsel of record shall represent the sex offender at the probation hearing. When a sex offender's counsel of record provides the court with good cause that the counsel of record should not represent the sex offender at the probation hearing and the sex offender is subsequently unable to obtain counsel, the district court shall notify the chief public defender of the upcoming probation hearing and the chief public defender shall make representation available to the sex offender at that hearing.

E. If the district court finds that a sex offender has violated the terms and conditions of his probation, the district court may revoke his probation or may order additional terms and conditions of probation.

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

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

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

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

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

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

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Section 8. 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 sentenced pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years of his sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

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

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

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

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

(d) whether the inmate is a habitual offender;

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

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

(3) make a finding that a parole is in the

best interest of society and the inmate; and

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

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

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

C. Except for sex offenders as provided in Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a first, second or third degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a two-year period of parole. An inmate who was convicted of a fourth degree felony and who has served the sentence of imprisonment imposed by the court in an institution designated by the corrections department shall be required to undergo a one-year period of parole. During the

period of parole, the person shall be under the guidance and supervision of the board.

D. Every person while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to his release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by his signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix his signature to the written statement of the conditions of his parole or does not have an approved parole plan, he shall not be released and shall remain in the custody of the institution in which he has served his sentence, excepting parole, until such time as the period of parole he was required to serve, less meritorious deductions, if any, expires, at which time he shall be released from that institution without parole, or until such time that he evidences his acceptance and agreement to the conditions of parole as required or receives approval for his parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for his parole plan shall reduce the period,

if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and his duties relating thereto.

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

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

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

(2) to reimburse a law enforcement agency or local crime stopper program for the amount of any reward paid by the agency or program for information leading to his

arrest, prosecution or conviction.

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

Section 9. A new section of the Probation and Parole Act, Section 31-21-10.1 NMSA 1978, is enacted 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 corrections department, the district court shall include a provision in the judgment and sentence that specifically requires the sex offender to serve an indeterminate period of supervised parole for a period of not less than five years and not in excess of twenty years. A sex offender's period of supervised parole may be for a period of less than twenty years if, at a review hearing provided for in Subsection B of this section, the state is unable to prove that the sex offender should remain on parole. Prior to placing a sex offender on parole, the board shall conduct a hearing to determine the terms and conditions of supervised parole for the sex offender. The board may consider any relevant factors, including:

- (1) the nature and circumstances of the

offense for which the sex offender was incarcerated;

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

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

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

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

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

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

including:

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

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

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

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

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

D. The board shall notify the chief public defender of an upcoming parole hearing for a sex offender, and the chief public defender shall make representation available to the sex offender at the parole hearing.

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

F. The provisions of this section shall apply to all sex offenders, except geriatric, permanently incapacitated and terminally ill inmates eligible for the medical and

geriatric parole program as provided by the Parole Board Act.

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

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

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

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

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

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

Section 10. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender Registration and Notification Act:

A. "sex offender" means a person eighteen years of age or older who:

(1) is a resident of New Mexico who is

convicted of a sex offense in New Mexico;

(2) changes his residence to New Mexico, when that person has been convicted of a sex offense in another state pursuant to state, federal or military law;

(3) is a resident of New Mexico who is convicted of a sex offense pursuant to federal or military law; or

(4) is a resident of another state and who has been convicted of a sex offense pursuant to state, federal or military law, but who is:

(a) employed full time or part time in New Mexico for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during any calendar year; or

(b) enrolled on a full-time or part-time basis in a private or public school in New Mexico, including a secondary school, a trade school, a professional institution or an institution of higher education; and

B. "sex offense" means:

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

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

(3) criminal sexual contact of a minor in

the second, third or fourth degree, as provided in Section 30-9-13 NMSA 1978;

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

(5) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(6) kidnapping, as provided in Section 30-4-1 NMSA 1978 when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(7) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(8) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(9) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (7) of this subsection, as provided in Section 30-28-1 NMSA 1978."

Section 11. Section 29-11A-5 NMSA 1978 (being Laws 1995, Chapter 106, Section 5, as amended) is amended to read:

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4, 5 & 8
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"29-11A-5. LOCAL REGISTRY--CENTRAL REGISTRY--
ADMINISTRATION BY DEPARTMENT OF PUBLIC SAFETY--PARTICIPATION
IN THE NATIONAL SEX OFFENDER REGISTRY--RULES.--

A. A county sheriff shall maintain a local

registry of sex offenders in his jurisdiction required to register pursuant to the provisions of the Sex Offender Registration and Notification Act.

B. The county sheriff shall forward registration information obtained from sex offenders to the department of public safety. The initial registration information and any new registration information subsequently obtained from a sex offender shall be forwarded by the county sheriff no later than ten working days after the information is obtained from a sex offender. If the department of public safety receives information regarding a sex offender from a governmental entity other than a county sheriff, the department shall send that information to the sheriff for the county in which the sex offender resides.

C. The department of public safety shall maintain a central registry of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act. The department shall participate in the national sex offender registry administered by the United States department of justice. The department shall send conviction information and fingerprints for all sex offenders registered in New Mexico to the national sex offender registry administered by the United States department of justice and to the federal bureau of investigation.

D. The department of public safety shall retain

registration information regarding sex offenders convicted for the following sex offenses for a period of twenty years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

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

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

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) kidnapping, as provided in Section 30-4-1 NMSA 1978 when the victim is less than eighteen years of age and the offender is not a parent of the victim; or

(5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

E. The department of public safety shall retain registration information regarding sex offenders convicted for the following offenses for a period of ten years following the sex offender's conviction, release from prison or release from probation or parole, whichever occurs later:

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

(2) criminal sexual contact in the fourth degree, as provided in Section 30-9-12 NMSA 1978;

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

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978;

(5) false imprisonment, as provided in Section 30-4-3 NMSA 1978, when the victim is less than eighteen years of age and the offender is not a parent of the victim;

(6) solicitation to commit criminal sexual contact of a minor in the second, third or fourth degree, as provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

(7) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (5) of this subsection, as provided in Section 30-28-1 NMSA 1978.

F. The department of public safety shall adopt rules necessary to carry out the provisions of the Sex Offender Registration and Notification Act."

Section 12. Section 29-11A-5.1 NMSA 1978 (being Laws 1999, Chapter 19, Section 8, as amended) is amended to read:

HJC/HBs 2, 3,
4, 5 & 8
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"29-11A-5.1. PUBLIC ACCESS TO INFORMATION REGARDING CERTAIN REGISTERED SEX OFFENDERS--ACTIVE COMMUNITY NOTIFICATION--INTERNET WEB SITE.--

A. If a sex offender is convicted of one of the

following sex offenses, the county sheriff shall forward registration information obtained from the sex offender to the district attorney for the judicial district in which the sex offender resides and, if the sex offender is a resident of a municipality, the chief law enforcement officer for the municipality in which the sex offender resides:

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

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

(3) sexual exploitation of children, as provided in Section 30-6A-3 NMSA 1978;

(4) sexual exploitation of children by prostitution, as provided in Section 30-6A-4 NMSA 1978; or

(5) attempt to commit any of the sex offenses set forth in Paragraphs (1) through (4) of this subsection, as provided in Section 30-28-1 NMSA 1978.

B. A person who wants to obtain registration information regarding sex offenders described in Subsection A of this section may request that information from the:

(1) sheriff for the county in which the sex offenders reside;

(2) chief law enforcement officer for the municipality in which the sex offenders reside;

(3) district attorney for the judicial district in which the sex offenders reside; or

(4) secretary of public safety.

C. Upon receiving a request for registration information regarding sex offenders described in Subsection A of this section, the county sheriff, chief municipal law enforcement officer, district attorney or secretary of public safety shall provide that registration information, with the exception of a sex offender's social security number, within a reasonable period of time, and no later than seven days after receiving the request.

D. Within seven days of receiving registration information from a sex offender described in Subsection A of this section, the county sheriff shall contact every licensed daycare center, elementary school, middle school and high school within a one-mile radius of the sex offender's residence and provide them with the sex offender's registration information, with the exception of the sex offender's social security number.

E. The department of public safety may establish and manage an internet web site that provides the public with registration information regarding sex offenders described in Subsection A of this section. The registration information provided to the public pursuant to this subsection shall not include a sex offender's social security number or a sex

offender's place of employment, unless the sex offender's employment requires him to have direct contact with children."

Section 13. Section 33-2-34 NMSA 1978 (being Laws 1999, Chapter 238, Section 1) is amended to read:

"33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS DEDUCTIONS.--

A. To earn meritorious deductions, a prisoner confined in a correctional facility designated by the corrections department must be an active participant in programs recommended for the prisoner by the classification committee and approved by the warden. Meritorious deductions shall not exceed the following amounts:

(1) for a prisoner confined for committing a serious violent offense, up to a maximum of four days per month of time served;

(2) for a prisoner confined for committing a nonviolent offense, up to a maximum of thirty days per month of time served;

(3) for a prisoner confined following revocation of parole for the alleged commission of a new felony offense or for absconding from parole, up to a maximum of four days per month of time served during the parole term following revocation; and

(4) for a prisoner confined following revocation of parole for a reason other than the alleged

commission of a new felony offense or absconding from parole, up to a maximum of eight days per month of time served during the parole term following revocation.

B. A prisoner may earn meritorious deductions upon recommendation by the classification committee, based upon the prisoner's active participation in approved programs and the quality of the prisoner's participation in those approved programs. A prisoner may not earn meritorious deductions unless the recommendation of the classification committee is approved by the warden.

C. If a prisoner's active participation in approved programs is interrupted by a lockdown at a correctional facility, he may continue to be awarded meritorious deductions at the rate he was earning meritorious deductions prior to the lockdown, unless the warden determines that the prisoner's conduct contributed to the initiation or continuance of the lockdown.

D. A prisoner confined in a correctional facility designated by the corrections department is eligible for lump-sum meritorious deductions as follows:

(1) for successfully completing an approved vocational, substance abuse or mental health program, one month; except when the prisoner has a demonstrable physical, mental health or developmental disability that prevents the prisoner from successfully earning a general education

diploma, in which case the prisoner shall be awarded three months;

(2) for earning a general education diploma, three months;

(3) for earning an associate's degree, four months;

(4) for earning a bachelor's degree, five months;

(5) for earning a graduate qualification, five months; and

(6) for engaging in a heroic act of saving life or property, engaging in extraordinary conduct for the benefit of the state or the public that is at great expense, risk or effort on behalf of the inmate, or engaging in extraordinary conduct far in excess of normal program assignments that demonstrates the prisoner's commitment to rehabilitate himself. The classification committee and the warden may recommend the number of days to be awarded in each case based upon the particular merits, but any award shall be determined by the director of the adult institutions division of the corrections department.

E. Lump-sum meritorious deductions, provided in Paragraphs (1) through (6) of Subsection D of this section, may be awarded in addition to the meritorious deductions provided in Subsections A and B of this section. Lump-sum

meritorious deductions shall not exceed one year per award and shall not exceed a total of one year for all lump-sum meritorious deductions awarded in any consecutive twelve-month period.

F. A prisoner is not eligible to earn meritorious deductions if the prisoner:

(1) disobeys an order to perform labor, pursuant to Section 33-8-4 NMSA 1978;

(2) is in disciplinary segregation;

(3) is within the first sixty days of receipt by the corrections department; or

(4) is not an active participant in programs recommended and approved for him by the classification committee.

G. The provisions of this section shall not be interpreted as providing eligibility to earn meritorious deductions from a sentence of life imprisonment or a sentence of death.

H. The corrections department shall promulgate rules to implement the provisions of this section, and the rules shall be matters of public record. A concise summary of the rules shall be provided to each prisoner, and each prisoner shall receive a quarterly statement of the meritorious deductions earned.

I. A New Mexico prisoner confined in a federal or

out-of-state correctional facility is eligible to earn meritorious deductions for active participation in programs on the basis of the prisoner's conduct and program reports furnished by that facility to the corrections department. All decisions regarding the award and forfeiture of meritorious deductions at such facility are subject to final approval by the director of the adult institutions division of the corrections department or the director's designee.

J. In order to be eligible for meritorious deductions, a prisoner confined in a federal or out-of-state correctional facility designated by the corrections department must actively participate in programs that are available. If a federal or out-of-state correctional facility does not have programs available for a prisoner, the prisoner may be awarded meritorious deductions at the rate the prisoner could have earned meritorious deductions if the prisoner had actively participated in programs.

K. A prisoner confined in a correctional facility in New Mexico that is operated by a private company, pursuant to a contract with the corrections department, is eligible to earn meritorious deductions in the same manner as a prisoner confined in state-run correctional facilities. All decisions regarding the award or forfeiture of meritorious deductions at such facilities are subject to final approval by the director of the adult institutions division of the corrections

department or the director's designee.

L. As used in this section:

(1) "active participant" means a prisoner who has begun, and is regularly engaged in, approved programs;

(2) "program" means work, vocational, educational, substance abuse and mental health programs, approved by the classification committee, that contribute to a prisoner's self-betterment through the development of personal and occupational skills. "Program" does not include recreational activities;

(3) "nonviolent offense" means any offense other than a serious violent offense; and

(4) "serious violent offense" means:

(a) second degree murder, as provided in Section 30-2-1 NMSA 1978;

(b) voluntary manslaughter, as provided in Section 30-2-3 NMSA 1978;

(c) third degree aggravated battery, as provided in Section 30-3-5 NMSA 1978;

(d) first degree kidnapping, as provided in Section 30-4-1 NMSA 1978;

(e) first and second degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978;

(f) second and third degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA

1978;

(g) first and second degree robbery, as provided in Section 30-16-2 NMSA 1978;

(h) second degree aggravated arson, as provided in Section 30-17-6 NMSA 1978;

(i) shooting at a dwelling or occupied building, as provided in Section 30-3-8 NMSA 1978;

(j) shooting at or from a motor vehicle, as provided in Section 30-3-8 NMSA 1978;

(k) aggravated battery upon a peace officer, as provided in Section 30-22-25 NMSA 1978;

(l) assault with intent to commit a violent felony upon a peace officer, as provided in Section 30-22-23 NMSA 1978;

(m) aggravated assault upon a peace officer, as provided in Section 30-22-22 NMSA 1978; and

(n) any of the following offenses, when the nature of the offense and the resulting harm are such that the court judges the crime to be a serious violent offense for the purpose of this section: 1) involuntary manslaughter, as provided in Section 30-2-3 NMSA 1978; 2) fourth degree aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3) third degree assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978; 4) third and fourth degree aggravated stalking, as provided in Section

30-3A-3.1 NMSA 1978; 5) second degree kidnapping, as provided in Section 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as provided in Section 30-6-1 NMSA 1978; 7) first, second and third degree abuse of a child, as provided in Section 30-6-1 NMSA 1978; 8) third degree dangerous use of explosives, as provided in Section 30-7-5 NMSA 1978; 9) third and fourth degree criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of a minor, as provided in Section 30-9-13 NMSA 1978; 11) third degree robbery, as provided in Section 30-16-2 NMSA 1978; 12) third degree homicide by vehicle or great bodily injury by vehicle, as provided in Section 66-8-101 NMSA 1978; and 13) battery upon a peace officer, as provided in Section 30-22-24 NMSA 1978."

Section 14. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected. _____