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SENATE BILL 7

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

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING FOR TREATMENT OF CRIMINAL OFFENDERS CONVICTED OF CERTAIN SEXUAL OFFENSES AGAINST CHILDREN LESS THAN THIRTEEN YEARS OF AGE; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

"[NEW MATERIAL] SENTENCING OF PERSONS CONVICTED OF CERTAIN SEXUAL OFFENSES AGAINST CHILDREN LESS THAN THIRTEEN YEARS OF AGE-- TREATMENT WITH MEDROXYPROGESTERONE ACETATE OR ITS EQUIVALENT. --

A. A person convicted of criminal sexual penetration in the first degree when the victim is a child less than thirteen years of age shall, if paroled, undergo

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1 medroxyprogesterone acetate treatment or its chemical
2 equivalent, in addition to any other treatment or punishment
3 prescribed for that offense by the sentencing court.

4 B. A person required to undergo treatment pursuant
5 to Subsection A of this section:

6 (1) shall be exempt from that treatment if he
7 has undergone or does undergo a permanent surgical alternative
8 to hormonal chemical treatment for sex offenders; and

9 (2) shall begin medroxyprogesterone acetate
10 treatment one week prior to his release on parole from the
11 physical custody of the corrections department or another
12 institution and shall remain on the treatment program unless
13 the parole board demonstrates to the satisfaction of the court
14 sentencing the person pursuant to this section that the
15 treatment is no longer necessary and the court enters an order
16 to that effect.

17 C. The department of health shall administer and
18 implement the protocols required by this section. These
19 protocols shall include a requirement that the person subject
20 to treatment pursuant to this section shall be informed in
21 writing about the effect of hormonal chemical treatment and any
22 side effects that may result from it. The person shall provide
23 a receipt in writing indicating that this information has been
24 communicated to him.

25 D. Nothing in the implementation of the protocols

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1 developed pursuant to Subsection C of this section shall
2 require a medical doctor employed by the corrections department
3 or the parole board to participate against his will in the
4 program authorized by this section. "

5 Section 2. 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. A person sentenced as a result of a conviction
9 for committing criminal sexual penetration in the first degree
10 when the victim is a child less than thirteen years of age may
11 be paroled pursuant to the applicable provisions of law, but
12 the term of parole shall be for the life of the person paroled.

13 ~~[A.]~~ B. Except as provided in Subsection A of this
14 section, an inmate of an institution who was sentenced to life
15 imprisonment as the result of the commission of a capital
16 felony, who was convicted of three violent felonies and
17 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
18 or who was convicted of two violent sexual offenses and
19 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
20 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
21 parole hearing after he has served thirty years of his
22 sentence. Before ordering the parole of an inmate sentenced to
23 life imprisonment, the board shall:

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

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- 1 (2) consider all pertinent information
2 concerning the inmate, including:
3 (a) the circumstances of the offense;
4 (b) mitigating and aggravating
5 circumstances;
6 (c) whether a deadly weapon was used in
7 the commission of the offense;
8 (d) whether the inmate is a habitual
9 offender;
10 (e) the reports filed under Section
11 31-21-9 NMSA 1978; and
12 (f) the reports of such physical and
13 mental examinations as have been made while in ~~[prison]~~ an
14 institution;
- 15 (3) make a finding that a parole is in the
16 best interest of society and the inmate; and
- 17 (4) make a finding that the inmate is able and
18 willing to fulfill the obligations of a law-abiding citizen.

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

24 ~~[B-]~~ C. Except as provided in Subsection A of this
25 section, unless the board finds that it is in the best interest

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1 of society and the parolee to reduce the period of parole, a
2 person who was convicted of a capital felony shall be required
3 to undergo a minimum period of parole of five years. During
4 the period of parole, the person shall be under the guidance
5 and supervision of the board.

6 ~~[C.]~~ D. Except as provided in Subsection A of this
7 section, an inmate who was convicted of a first, second or
8 third degree felony and who has served the sentence of
9 imprisonment imposed by the court in [~~a corrections facility~~]
10 an institution designated by the corrections department shall
11 be required to undergo a two-year period of parole. An inmate
12 who was convicted of a fourth degree felony and who has served
13 the sentence of imprisonment imposed by the court in [~~a~~
14 ~~corrections facility~~] an institution designated by the
15 corrections department shall be required to undergo a one-year
16 period of parole. During the period of parole, the person
17 shall be under the guidance and supervision of the board.

18 ~~[D.—Every]~~ E. A person while on parole shall
19 remain in the legal custody of the institution from which he
20 was released, but shall be subject to the orders of the board.
21 The board shall furnish to each inmate as a prerequisite to his
22 release under its supervision a written statement of the
23 conditions of parole that shall be accepted and agreed to by
24 the inmate as evidenced by his signature affixed to a duplicate
25 copy to be retained in the files of the board. The board shall

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

22 [~~E.-~~] F. Except as provided in Subsection A of this
23 section, when a person on parole has performed the obligations
24 of his release for the period of parole provided in this
25 section, the board shall make a final order of discharge and

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1 issue him a certificate of discharge.

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

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

14 (2) to reimburse a law enforcement agency or
15 local crime stopper program for the amount of any reward paid
16 by the agency or program for information leading to his arrest,
17 prosecution or conviction.

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

22 Section 3. APPROPRIATION. -- Seventy thousand dollars
23 (\$70,000) is appropriated from the general fund to the
24 department of health for expenditure in fiscal years 2004 and
25 2005 to carry out the purposes of this act. Any unexpended or

1 unencumbered balance remaining at the end of fiscal year 2005
2 shall revert to the general fund.

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