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AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE AMOUNT PAID BY
OFFENDERS FOR SUPERVISED PROBATION AND PAROLE SERVICES;
REQUIRING OFFENDERS WHO PARTICIPATE IN A COMMUNITY
CORRECTIONS PROGRAM TO MAKE A CO-PAYMENT; AMENDING SECTIONS
OF THE NMSA 1978.

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

Section 1. Section 31-20-6 NMSA 1978 (being Laws 1963, Chapter 303,
Section 29-18, as amended) is amended to read:

"31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
SENTENCE.--The magistrate, metropolitan or district court shall attach to its order
deferring or suspending sentence reasonable conditions as it may deem necessary
to ensure that the defendant will observe the laws of the United States and the
various states and the ordinances of any municipality. The defendant upon
conviction shall be required 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, but in no event shall
reimbursement to the crime stopper program preempt restitution to victims pursuant
to the provisions of Section 31-17-1 NMSA 1978. The defendant upon conviction
shall be required to pay the actual costs of his supervised probation service to the
adult probation and parole division of the corrections department or appropriate
responsible agency for deposit to the corrections department intensive supervision
fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid
in monthly installments of not less than twenty-five dollars (\$25.00) and not more
than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of
the adult probation and parole division, based upon the financial circumstances of

1 the defendant. The defendant's payment of the supervised probation costs shall not S
2 be waived unless the court holds an evidentiary hearing and finds that the B
3 defendant is unable to pay the costs. If the court waives the defendant's payment 5
4 of the supervised probation costs and the defendant's financial circumstances 6
5 subsequently change so that the defendant is able to pay the costs, the appropriate 3
6 district supervisor of the adult probation and parole division shall advise the court P
7 and the court shall hold an evidentiary hearing to determine whether the waiver a
8 should be rescinded. The court may also require the defendant to: g
9 A. provide for the support of persons for whose support he is legally e
10 responsible; 2
11 B. undergo available medical or psychiatric treatment and enter and
12 remain in a specified institution when required for that purpose;
13 C. be placed on probation under the supervision, guidance or
14 direction of the adult probation and parole division for a term not to exceed five
15 years;
16 D. serve a period of time in volunteer labor to be known as
17 "community service". The type of labor and period of service shall be at the sole
18 discretion of the court; provided that a person receiving community service shall be
19 immune from any civil liability other than gross negligence arising out of the
20 community service, and a person who performs community service pursuant to
21 court order or a criminal diversion program shall not be entitled to wages, shall not
22 be considered an employee and shall not be entitled to workers' compensation,
23 unemployment benefits or any other benefits otherwise provided by law. As used in
24 this subsection, "community service" means labor that benefits the public at large or
25 a public, charitable or educational entity or institution;
E. make a contribution of not less than ten dollars (\$10.00) and not
more than one hundred dollars (\$100), to be paid in monthly installments of not less

1 than five dollars (\$5.00), to a local crime stopper program or a local drug abuse
2 resistance education program that operates in the territorial jurisdiction of the court;
3 and

4 F. satisfy any other conditions reasonably related to his
5 rehabilitation."

6 Section 2. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28,
7 Section 1, as amended) is amended to read:

8 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

9 A. An inmate of an institution who was sentenced to life
10 imprisonment as the result of the commission of a capital felony, who was convicted
11 of three violent felonies and sentenced pursuant to Sections 31-18-23 and 31-18-24
12 NMSA 1978 or who was convicted of two violent sexual offenses and sentenced
13 pursuant to Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26
14 NMSA 1978 becomes eligible for a parole hearing after he has served thirty years
15 of his sentence. Before ordering the parole of an inmate sentenced to life
16 imprisonment, the board shall:

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

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

- 21 (a) the circumstances of the offense;
22 (b) mitigating and aggravating circumstances;
23 (c) whether a deadly weapon was used in the
24 commission of the offense;
25 (d) whether the inmate is a habitual offender;
(e) the reports filed under Section

31-21-9 NMSA 1978; and

1 (f) the reports of such physical and mental 5
2 examinations as have been made while in an institution; 6

3 (3) make a finding that a parole is in the best interest of 3
4 society and the inmate; and 4

5 (4) make a finding that the inmate is able and willing to fulfill 5
6 the obligations of a law-abiding citizen. 6

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

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

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

25 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

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

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

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

24 (1) to pay the actual costs of his parole services to the adult
25 probation and parole division of the corrections department for deposit to the
corrections department intensive supervision fund not exceeding one thousand
eight hundred dollars (\$1,800) annually to be paid in monthly installments of not

1 less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars 5
2 (\$150), as set by the appropriate district supervisor of the adult probation and 6
3 parole division, based upon the financial circumstances of the defendant. The 3
4 defendant's payment of the supervised parole costs shall not be waived unless the P
5 board holds an evidentiary hearing and finds that the defendant is unable to pay the a
6 costs. If the board waives the defendant's payment of the supervised parole costs g
7 and the defendant's financial circumstances subsequently change so that the e
8 defendant is able to pay the costs, the appropriate district supervisor of the adult 6
9 probation and parole division shall advise the board and the board shall hold an
10 evidentiary hearing to determine whether the waiver should be rescinded; and
11 (2) to reimburse a law enforcement agency or local crime
12 stopper program for the amount of any reward paid by the agency or program for
13 information leading to his arrest, prosecution or conviction.
14 G. The provisions of this section shall apply to all inmates except
15 geriatric, permanently incapacitated and terminally ill inmates eligible for the
16 medical and geriatric parole program as provided by the Parole Board Act."
17 Section 3. Section 33-9-3 NMSA 1978 (being Laws 1983, Chapter 202,
18 Section 3, as amended) is amended to read:
19 "33-9-3. COMMUNITY CORRECTIONS GRANT FUND--ESTABLISHED--
20 CO-PAYMENTS.--
21 A. There is created in the state treasury a special fund to be known
22 as the "community corrections grant fund". All money appropriated to the fund or
23 accruing to it as a result of gift, deposit, investments or other sources shall not be
24 transferred to another fund or encumbered or disbursed in any manner except as
25 provided in the Adult Community Corrections Act. The fund shall be for the purpose
of providing programs and services for the diversion of criminal offenders to
community-based settings.

1 B. The department shall require criminal offenders who participate in
2 a program and who receive services to make a co-payment to offset the cost of the
3 services. The amount of the co-payment shall be based upon the offender's ability
4 to pay. The department shall collect the co-payments and on a monthly basis
5 deliver them to the state treasurer for deposit in the community corrections grant
6 fund."

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7 Section 4. APPLICABILITY.--The provisions of this act apply to persons
8 convicted of a criminal offense on or after July 1, 2004.

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9 Section 5. EFFECTIVE DATE.--The effective date of the provisions of this
10 act is July 1, 2004.

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