

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 439

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

AN ACT

RELATING TO SEX OFFENDERS; MODIFYING ELECTRONIC MONITORING
REQUIREMENTS FOR SEX OFFENDERS TO PROVIDE FOR PASSIVE
ELECTRONIC MONITORING; ALLOWING THE PAROLE BOARD TO DETERMINE,
AFTER A HEARING, WHETHER ELECTRONIC MONITORING SHOULD CONTINUE
OR BE SUSPENDED AS A PAROLE REQUIREMENT; 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

.186705.1

underscored material = new
[bracketed material] = delete

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

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

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

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

23 B. Prior to placing a sex offender on parole, the
24 board shall conduct a hearing to determine the terms and
25 conditions of supervised parole for the sex offender. The

.186705.1

1 board may consider any relevant factors, including:

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

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

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

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

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

15 C. When a sex offender has served the initial five
16 years of supervised parole, and at two and one-half year
17 intervals thereafter, the board shall review the duration of
18 the sex offender's supervised parole. At each review hearing,
19 the attorney general shall bear the burden of proving by clear
20 and convincing evidence that the sex offender should remain on
21 parole.

22 D. The board may order a sex offender released on
23 parole to abide by reasonable terms and conditions of parole,
24 including:

25 (1) being subject to intensive supervision by

.186705.1

1 a parole officer of the corrections department;

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

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

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

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

12 E. The board shall require electronic [~~real-time~~]
13 monitoring of every sex offender released on parole [~~for the~~
14 ~~entire time the sex offender is on parole~~]. The electronic
15 monitoring shall use global positioning system monitoring
16 technology or any [~~successor~~] technology that would [~~give~~
17 ~~continuous~~] provide reliable information on the sex offender's
18 whereabouts and enable law enforcement and the corrections
19 department to determine the [~~real-time~~] position and movements
20 of a sex offender to a high level of accuracy. Electronic
21 monitoring shall be required for the entire time the sex
22 offender is on parole unless the board, after hearing evidence
23 and testimony at the parole review hearing provided in
24 Subsection C of this section, determines that electronic
25 monitoring should be suspended as a parole requirement.

.186705.1

underscored material = new
[bracketed material] = delete

1 F. The board shall notify the chief public defender
2 of an upcoming parole hearing for a sex offender pursuant to
3 Subsection C of this section, and the chief public defender
4 shall make representation available to the sex offender at the
5 parole hearing.

6 G. If the board finds that a sex offender has
7 violated the terms and conditions of the sex offender's parole,
8 the board may revoke the sex offender's parole or may modify
9 the terms and conditions of parole.

10 H. The provisions of this section shall apply to
11 all sex offenders, except geriatric, permanently incapacitated
12 and terminally ill inmates eligible for the medical and
13 geriatric parole program as provided by the Parole Board Act.

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

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

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

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

.186705.1

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

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

6 (6) child solicitation by electronic
7 communication device, as provided in Section 30-37-3.2 NMSA
8 1978."

9 SECTION 2. APPLICABILITY.--The provisions of this act
10 shall apply to all sex offenders, as defined in Section
11 31-21-10.1 NMSA 1978, who are in the custody of the corrections
12 department or on parole on or after July 1, 2011.

13 SECTION 3. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2011.