

1 SENATE BILL 578

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Rod Adair

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10 AN ACT

11 RELATING TO SEX OFFENDERS; PROVIDING FOR TREATMENT OF PERSONS  
12 CONVICTED OF CERTAIN SEXUAL OFFENSES AGAINST CHILDREN UNDER  
13 THIRTEEN YEARS OF AGE; REQUIRING PAROLE FOR LIFE; MAKING AN  
14 APPROPRIATION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
15 SECTION OF LAW IN LAWS 2007.

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

18 SECTION 1. A new section of Chapter 31, Article 18 NMSA  
19 1978 is enacted to read:

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

23 A. A person convicted of aggravated criminal sexual  
24 penetration or criminal sexual penetration in the first degree  
25 when the victim is a child under thirteen years of age shall,

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1 if paroled, undergo medroxyprogesterone acetate treatment or  
2 its chemical equivalent, in addition to any other treatment or  
3 punishment prescribed for that offense.

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

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

10 (2) begin medroxyprogesterone acetate  
11 treatment one week prior to release on parole from the physical  
12 custody of the corrections department or another institution  
13 and shall remain on the treatment program until the parole  
14 board determines that the treatment is no longer necessary.

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

24 D. Nothing in the implementation of the protocols  
25 developed pursuant to Subsection C of this section shall

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1 require a medical doctor employed by the corrections department  
2 or the parole board to participate, against the doctor's will,  
3 in the program authorized by this section."

4 SECTION 2. Section 31-21-10.1 NMSA 1978 (being Laws 2003  
5 (1st S.S.), Chapter 1, Section 9, as amended by Laws 2007,  
6 Chapter 68, Section 4 and by Laws 2007, Chapter 69, Section 4)  
7 is amended to read:

8 "31-21-10.1. SEX OFFENDERS--PERIOD OF PAROLE--TERMS AND  
9 CONDITIONS OF PAROLE.--

10 A. Except as provided in Subsection B of this  
11 section, if the district court sentences a sex offender to a  
12 term of incarceration in a facility designated by the  
13 corrections department, the district court shall include a  
14 provision in the judgment and sentence that specifically  
15 requires the sex offender to serve an indeterminate period of  
16 supervised parole for a period of:

17 (1) not less than five years and not in excess  
18 of twenty years for the offense of kidnapping when committed  
19 with intent to inflict a sexual offense upon the victim,  
20 criminal sexual penetration in the third degree, criminal  
21 sexual contact of a minor in the fourth degree, ~~[or]~~ sexual  
22 exploitation of children in the second degree or child  
23 solicitation by electronic communication device; or

24 (2) not less than five years and up to the  
25 natural life of the sex offender for the offense of ~~[aggravated~~

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1 ~~criminal sexual penetration~~] criminal sexual penetration in the  
2 first or second degree when the victim is at least thirteen  
3 years of age, criminal sexual contact of a minor in the second  
4 or third degree or sexual exploitation of children by  
5 prostitution in the first or second degree.

6 A sex offender's period of supervised parole may be for a  
7 period of less than the maximum if, at a review hearing  
8 provided for in Subsection [E] D of this section, the state is  
9 unable to prove that the sex offender should remain on parole.

10 B. A sex offender convicted of aggravated criminal  
11 sexual penetration or criminal sexual penetration in the first  
12 degree when the victim is a child under thirteen years of age  
13 may be paroled pursuant to applicable law, but the term of  
14 parole shall be for the remainder of the offender's natural  
15 life.

16 [~~B-~~] C. Prior to placing a sex offender on parole,  
17 the board shall conduct a hearing to determine the terms and  
18 conditions of supervised parole for the sex offender. The  
19 board may consider any relevant factors, including:

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

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

24 (3) rehabilitation efforts engaged in by the  
25 sex offender, including participation in treatment programs

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1 while incarcerated or elsewhere;

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

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

8 ~~[G-]~~ D. Except as provided in Subsection B of this  
9 section, when a sex offender has served the initial five years  
10 of supervised parole, and at two and one-half year intervals  
11 thereafter, the board shall review the duration of the sex  
12 offender's supervised parole. At each review hearing, the  
13 attorney general shall bear the burden of proving by clear and  
14 convincing evidence that the sex offender should remain on  
15 parole.

16 ~~[D-]~~ E. The board may order a sex offender released  
17 on parole to abide by reasonable terms and conditions of  
18 parole, including:

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

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

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

25 (4) a parole agreement by the sex offender not

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1 to have contact with certain persons or classes of persons; and

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

6 [~~E.~~] F. The board shall require electronic real-  
7 time monitoring of every sex offender released on parole for  
8 the entire time the sex offender is on parole. The electronic  
9 monitoring shall use global positioning system monitoring  
10 technology or any successor technology that would give  
11 continuous information on the sex offender's whereabouts and  
12 enable law enforcement and the corrections department to  
13 determine the real-time position of a sex offender to a high  
14 level of accuracy.

15 [~~F.~~] G. The board shall notify the chief public  
16 defender of an upcoming parole hearing for a sex offender  
17 pursuant to Subsection [~~G.~~] D. of this section, and the chief  
18 public defender shall make representation available to the sex  
19 offender at the parole hearing.

20 [~~G.~~] H. If the board finds that a sex offender has  
21 violated the terms and conditions of the sex offender's parole,  
22 the board may revoke the sex offender's parole or may modify  
23 the terms and conditions of parole.

24 [~~H.~~] I. The provisions of this section shall apply  
25 to all sex offenders, except geriatric, permanently

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1 incapacitated and terminally ill inmates eligible for the  
2 medical and geriatric parole program as provided by the Parole  
3 Board Act.

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

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

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

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

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

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

21 (6) child solicitation by electronic  
22 communication device, as provided in Section 30-37-3.2 NMSA  
23 1978."

24 **SECTION 3. APPROPRIATION.--**Fifty thousand dollars  
25 (\$50,000) is appropriated from the general fund to the  
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1 corrections department for expenditure in fiscal year 2012 to  
2 implement a program of hormonal chemical treatment for sex  
3 offenders released on parole as provided in this act. Any  
4 unexpended or unencumbered balance remaining at the end of  
5 fiscal year 2012 shall revert to the general fund.

6 SECTION 4. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2011.