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HOUSE BILL 226

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; ENACTING THE PERSISTENT  
VIOLENT OFFENDER ACT; PROVIDING AN INDETERMINATE LIFE SENTENCE  
FOR CERTAIN CRIMINAL OFFENDERS; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1  
through 5 of this act may be cited as the "Persistent Violent  
Offender Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT. -- The purpose  
of the Persistent Violent Offender Act is to protect the  
people of New Mexico from repeat, violent, criminal offenders  
who are not amenable to rehabilitation.

Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the  
Persistent Violent Offender Act:

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1           A. "amenable to rehabilitation" means that it is  
2 more probable than not that a defendant will submit to reform  
3 and become a law-abiding member of society as a result of  
4 sentencing in accordance with sections of the Criminal  
5 Sentencing Act;

6           B. "class A violent offense" means:

7                   (1) assault with intent to commit a violent  
8 felony, as provided in Section 30-3-3 NMSA 1978, when it  
9 results in great bodily harm to another person;

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

13                   (3) kidnapping that results in great bodily  
14 harm inflicted upon the victim by his captor, as provided in  
15 Section 30-4-1 NMSA 1978;

16                   (4) murder in the first or second degree, as  
17 provided in Section 30-2-1 NMSA 1978;

18                   (5) robbery while armed with a deadly weapon,  
19 as provided in Section 30-16-2 NMSA 1978, when it results in  
20 great bodily harm to another person; or

21                   (6) shooting at or from a motor vehicle that  
22 results in great bodily harm to another person, as provided in  
23 Subsection B of Section 30-3-8 NMSA 1978;

24           C. "class B violent offense" means:

25                   (1) aggravated arson, as provided in Section

1 3-17-6 NMSA 1978, when it results in great bodily harm to  
2 another person;

3 (2) aggravated assault, as provided in  
4 Section 30-3-2 NMSA 1978, when it results in great bodily harm  
5 to another person;

6 (3) aggravated battery, as provided in  
7 Subsection C of Section 30-3-5 NMSA 1978;

8 (4) assault with intent to commit a violent  
9 felony, as provided in Section 30-3-3 NMSA 1978;

10 (5) kidnapping when the victim is freed  
11 without having had great bodily harm inflicted upon him by his  
12 captor, as provided in Section 30-4-1 NMSA 1978;

13 (6) robbery while armed with a deadly weapon,  
14 as provided in Section 30-16-2 NMSA 1978; or

15 (7) shooting at or from a motor vehicle that  
16 results in injury to another person, as provided in Subsection  
17 B of Section 30-3-8 NMSA 1978;

18 D. "great bodily harm" means an injury to a person  
19 that creates a high probability of death or that causes  
20 serious disfigurement or that results in permanent loss or  
21 impairment of the function of a member or organ of the  
22 person's body;

23 E. "persistent violent offender" means a person  
24 who is not amenable to rehabilitation and who has been  
25 convicted of:

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- 1 (1) two or more class A violent offenses;
- 2 (2) one class A violent offense and two or
- 3 more class B violent offenses; or
- 4 (3) four or more class B violent offenses;
- 5 and

6 F. "underlying sentence" means the total sentence  
7 imposed against a defendant for all convictions arising out of  
8 the same transaction or occurrence that includes a class A  
9 violent offense or class B violent offense.

10 Section 4. [NEW MATERIAL] VIOLENT OFFENSE CONVICTIONS--  
11 SENTENCING HEARING-- LIFE IMPRISONMENT. --

12 A. When a defendant has been convicted of a class  
13 A violent offense or a class B violent offense and the  
14 underlying sentence has been imposed, the state may petition  
15 the court to conduct a hearing to determine if the defendant  
16 is a persistent violent offender. The state shall file the  
17 petition within thirty days of the entry of a judgment and  
18 sentence for the class A violent offense or the class B  
19 violent offense. The state bears the burden of proving by  
20 clear and convincing evidence that the defendant is a  
21 persistent violent offender; however, conviction of two or  
22 more class A violent offenses, one class A violent offense and  
23 two or more class B violent offenses, or four or more class B  
24 violent offenses may be sufficient to support a finding by  
25 clear and convincing evidence that the defendant is not

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1 amenable to rehabilitation.

2 B. The defendant shall be notified of the date,  
3 time and place of the persistent violent offender hearing not  
4 less than thirty days prior to the scheduled hearing.

5 C. Upon a determination by the court that the  
6 defendant is not amenable to rehabilitation and that each  
7 requisite class A violent offense or class B violent offense  
8 is part of a separate transaction or occurrence, the defendant  
9 shall be found to be a persistent violent offender and the  
10 defendant's sentence shall be increased to a sentence of life  
11 imprisonment. The life imprisonment sentence shall not be  
12 subject to parole pursuant to the provisions of 31-21-10 NMSA  
13 1978.

14 D. When a defendant has a prior felony conviction  
15 rendered by a court of another state, the United States, a  
16 territory of the United States or the commonwealth of Puerto  
17 Rico, the felony conviction shall be considered a class A  
18 violent offense or a class B violent offense for the purpose  
19 of the Persistent Violent Offender Act if the felony offense  
20 would have been classified as a class A violent offense or a  
21 class B violent offense in New Mexico at the time of the  
22 defendant's conviction.

23 E. When a defendant is found to be a persistent  
24 violent offender as a result of being convicted of murder in  
25 the first degree as the predicate class A violent offense

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1 necessary for being found to be a persistent violent offender,  
2 the persistent violent offender determination does not  
3 preclude the imposition of a sentence of death upon the  
4 defendant pursuant to the provisions of Section 31-20A-1 NMSA  
5 1978.

6 Section 5. [NEW MATERIAL] REVIEW OF PERSISTENT VIOLENT  
7 OFFENDER LIFE IMPRISONMENT SENTENCE-- PAROLE-- REVOCATION OF  
8 PAROLE. --

9 A. A persistent violent offender may petition the  
10 sentencing court for review of the persistent violent  
11 offender's life imprisonment sentence upon serving the time  
12 set forth in the underlying sentence, or upon serving ten  
13 years, whichever period of time is greater.

14 B. When a persistent violent offender has been  
15 convicted of murder in the first degree as the predicate class  
16 A violent offense necessary for being found to be a persistent  
17 violent offender and sentenced to life imprisonment for  
18 committing murder in the first degree, the persistent violent  
19 offender may petition the court for review of his persistent  
20 violent offender's life imprisonment sentence after serving  
21 thirty years of the persistent violent offender life  
22 imprisonment sentence.

23 C. Upon the filing of a petition for review of a  
24 persistent violent offender life imprisonment sentence, the  
25 court shall appoint counsel to represent the petitioner if the

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1 petitioner is not represented by private counsel. The attorney  
2 general's office shall represent the interests of the state.  
3 The attorney general, in conjunction with the administrative  
4 office of the district attorneys, shall provide notification  
5 of the scheduled review hearing to all victims of the offenses  
6 for which the offender was sentenced as a persistent violent  
7 offender.

8 D. The petitioner shall be notified of the date,  
9 time and place for review of his persistent violent offender's  
10 life imprisonment sentence not less than thirty days prior to  
11 the scheduled hearing.

12 E. The petitioner bears the burden of proving by a  
13 preponderance of the evidence that the petitioner has been  
14 rehabilitated and does not pose a substantial risk of violence  
15 to society.

16 F. If the court finds that the petitioner has been  
17 rehabilitated and does not pose a substantial risk of violence  
18 to society, the petitioner shall be released from imprisonment  
19 and placed on parole for a period of five years.

20 G. If a successful petitioner violates the  
21 conditions of the petitioner's parole by committing a capital  
22 felony, first degree felony, second degree felony or third  
23 degree felony, the state shall revoke the petitioner's parole  
24 and return the petitioner to prison to serve the persistent  
25 violent offender life imprisonment sentence, and that person

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1 shall not thereafter be allowed to file any further petitions  
2 for review.

3 H. If a successful petitioner violates the  
4 conditions of the petitioner's parole by committing a criminal  
5 offense other than a capital felony, first degree felony,  
6 second degree felony or third degree felony, or by committing  
7 a technical violation of the conditions of the petitioner's  
8 parole, the state may revoke the petitioner's parole and  
9 return the petitioner to prison to serve the remainder of the  
10 petitioner's parole period.

11 I. If the court denies the persistent violent  
12 offender's petition for review, the persistent violent  
13 offender may petition for review of the persistent violent  
14 offender's life imprisonment sentence at five-year intervals  
15 following denial of the petition.

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

18 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

19 A. [~~An inmate~~] A prisoner of an institution who  
20 was sentenced to life imprisonment as the result of the  
21 commission of a capital felony [ ~~who was convicted of three~~  
22 ~~violent felonies and sentenced pursuant to Sections 31-18-23~~  
23 ~~and 31-18-24 NMSA 1978 or who was convicted of two violent~~  
24 ~~sexual offenses and sentenced pursuant to Subsection A of~~  
25 ~~Section 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978 ]~~

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1 becomes eligible for a parole hearing after he has served  
2 thirty years of his sentence. Before ordering the parole of  
3 ~~[an inmate]~~ a prisoner sentenced to life imprisonment, the  
4 board shall:

5 (1) interview the ~~[inmate]~~ prisoner at the  
6 institution where he is committed;

7 (2) consider all pertinent information  
8 concerning the ~~[inmate]~~ prisoner, including:

9 (a) the circumstances of the offense;

10 (b) mitigating and aggravating  
11 circumstances;

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

14 (d) whether the ~~[inmate]~~ prisoner is a  
15 habitual offender;

16 (e) the reports filed under Section  
17 31-21-9 NMSA 1978; and

18 (f) the reports of such physical and  
19 mental examinations as have been made while in prison;

20 (3) make a finding that a parole is in the  
21 best interest of society and the ~~[inmate]~~ prisoner; and

22 (4) make a finding that the ~~[inmate]~~ prisoner  
23 is able and willing to fulfill the obligations of a law-  
24 abiding citizen.

25 If parole is denied, the ~~[inmate]~~ prisoner sentenced to

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1 life imprisonment shall again become entitled to a parole  
2 hearing at two-year intervals. The board may, on its own  
3 motion, reopen any case in which a hearing has already been  
4 granted and parole denied.

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

11 C. [~~An inmate~~] A prisoner who was convicted of a  
12 first, second or third degree felony and who has served the  
13 sentence of imprisonment imposed by the court in a corrections  
14 facility designated by the corrections department shall be  
15 required to undergo a two-year period of parole. [~~An inmate~~]  
16 A prisoner who was convicted of a fourth degree felony and who  
17 has served the sentence of imprisonment imposed by the court  
18 in a corrections facility designated by the corrections  
19 department shall be required to undergo a one-year period of  
20 parole. During the period of parole, the person shall be  
21 under the guidance and supervision of the board.

22 D. Every person while on parole shall remain in  
23 the legal custody of the institution from which he was  
24 released, but shall be subject to the orders of the board.  
25 The board shall furnish to each [~~inmate~~] prisoner as a

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1 prerequisite to his release under its supervision a written  
2 statement of the conditions of parole that shall be accepted  
3 and agreed to by the [~~inmate~~] prisoner as evidenced by his  
4 signature affixed to a duplicate copy to be retained in the  
5 files of the board. The board shall also require as a  
6 prerequisite to release the submission and approval of a  
7 parole plan. If [~~an inmate~~] a prisoner refuses to affix his  
8 signature to the written statement of the conditions of his  
9 parole or does not have an approved parole plan, he shall not  
10 be released and shall remain in the custody of the corrections  
11 facility in which he has served his sentence, excepting  
12 parole, until such time as the period of parole he was  
13 required to serve, less meritorious deductions, if any,  
14 expires, at which time he shall be released from that facility  
15 without parole, or until such time that he evidences his  
16 acceptance and agreement to the conditions of parole as  
17 required or receives approval for his parole plan or both.  
18 Time served from the date that [~~an inmate~~] a prisoner refuses  
19 to accept and agree to the conditions of parole or fails to  
20 receive approval for his parole plan shall reduce the period,  
21 if any, to be served under parole at a later date. If the  
22 district court has ordered that the [~~inmate~~] prisoner make  
23 restitution to a victim as provided in Section 31-17-1 NMSA  
24 1978, the board shall include restitution as a condition of  
25 parole. The board shall also personally apprise the [~~inmate~~]

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1 prisoner of the conditions of parole and his duties relating  
2 thereto.

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

7 F. Pursuant to the provisions of Section 31-18-15  
8 NMSA 1978, the board shall require the [~~inmate~~] prisoner as a  
9 condition of parole:

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

19 (2) to reimburse a law enforcement agency or  
20 local crime stopper program for the amount of any reward paid  
21 by the agency or program for information leading to his  
22 arrest, prosecution or conviction.

23 G. The provisions of this section shall apply to  
24 all [~~inmates~~] prisoners except geriatric, permanently  
25 incapacitated and terminally ill [~~inmates~~] prisoners eligible

1 for the medical and geriatric parole program as provided by  
2 the Parole Board Act. "

3 Section 7. REPEAL. -- Sections 31-18-23 through 31-18-26  
4 NMSA 1978 (being Laws 1994, Chapter 24, Sections 2 and 3 and  
5 Laws 1996, Chapter 79, Sections 1 and 2, as amended) are  
6 repealed.

7 Section 8. EFFECTIVE DATE. -- The effective date of the  
8 provisions of this act is July 1, 1999.

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 February 10, 1999  
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8 Mr. Speaker:  
9

10 Your JUDICIARY COMMITTEE, to whom has been referred  
11

12 HOUSE BILL 226  
13

14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, and thence referred to the  
16 APPROPRIATIONS AND FINANCE COMMITTEE.

17 Respectfully submitted,  
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22 R. David Pederson, Chairman  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJ/HB 226

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

6 (Chief Clerk)

(Chief Clerk)

8 Date \_\_\_\_\_

10 The roll call vote was 7 For 3 Against

11 Yes: 7

12 No: Mallory, Taylor, T., Vaughn

13 Excused: Luna, Rios

14 Absent: None

16 J:\99BillsWP\H0226

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

3  
4 March 2, 1999

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7 Mr. Speaker:

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9 Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
10 whom has been referred

11 HOUSE BILL 226

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13 has had it under consideration and reports same with  
14 recommendation that it DO NOT PASS, but that

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16 HOUSE APPROPRIATIONS AND FINANCE COMMITTEE  
17 SUBSTITUTE FOR HOUSE BILL 226

18 DO PASS.  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

Page 17

Respectfully submitted,

\_\_\_\_\_  
Max Coll, Chairman

Adopted \_\_\_\_\_

(Chief Clerk)

Not Adopted \_\_\_\_\_

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 15 For 0 Against

Yes: 15

Excused: Picraux, Watchman

Absent: None

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1 HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR  
2 HOUSE BILL 226  
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**  
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9 AN ACT

10 RELATING TO CRIMINAL SENTENCING; ENACTING THE PERSISTENT  
11 VIOLENT OFFENDER ACT; PROVIDING AN INDETERMINATE LIFE SENTENCE  
12 FOR CERTAIN CRIMINAL OFFENDERS; AMENDING, REPEALING AND  
13 ENACTING SECTIONS OF THE NMSA 1978.

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

15 Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1  
16 through 5 of this act may be cited as the "Persistent Violent  
17 Offender Act".

18 Section 2. [NEW MATERIAL] PURPOSE OF ACT. --The purpose  
19 of the Persistent Violent Offender Act is to protect the  
20 people of New Mexico from repeat, violent, criminal offenders  
21 who are not amenable to rehabilitation.

22 Section 3. [NEW MATERIAL] DEFINITIONS. --As used in the  
23 Persistent Violent Offender Act:

24 A. "amenable to rehabilitation" means that it is  
25 more probable than not that a defendant will submit to reform  
and become a law-abiding member of society as a result of

sentencing in accordance with sections of the Criminal Sentencing Act;

B. "class A violent offense" means:

1 (1) assault with intent to commit a violent  
2 felony, as provided in Section 30-3-3 NMSA 1978, when it  
3 results in great bodily harm to another person;

4 (2) criminal sexual penetration in the first  
5 or second degree, as provided in Subsection C or D of Section  
6 30-9-11 NMSA 1978;

7 (3) kidnapping that results in great bodily  
8 harm inflicted upon the victim by his captor, as provided in  
9 Section 30-4-1 NMSA 1978;

10 (4) murder in the first or second degree, as  
11 provided in Section 30-2-1 NMSA 1978;

12 (5) robbery while armed with a deadly weapon,  
13 as provided in Section 30-16-2 NMSA 1978, when it results in  
14 great bodily harm to another person; or

15 (6) shooting at or from a motor vehicle that  
16 results in great bodily harm to another person, as provided in  
17 Subsection B of Section 30-3-8 NMSA 1978;

C. "class B violent offense" means:

18 (1) aggravated arson, as provided in Section  
19 3-17-6 NMSA 1978, when it results in great bodily harm to  
20 another person;

21 (2) aggravated assault, as provided in  
22 Section 30-3-2 NMSA 1978, when it results in great bodily harm  
23 to another person;

24 (3) aggravated battery, as provided in  
25 Subsection C of Section 30-3-5 NMSA 1978;

(4) assault with intent to commit a violent  
felony, as provided in Section 30-3-3 NMSA 1978;

(5) kidnapping when the victim is freed

1 without having had great bodily harm inflicted upon him by his  
2 captor, as provided in Section 30-4-1 NMSA 1978;

3 (6) robbery while armed with a deadly weapon,  
4 as provided in Section 30-16-2 NMSA 1978; or

5 (7) shooting at or from a motor vehicle that  
6 results in injury to another person, as provided in Subsection  
7 B of Section 30-3-8 NMSA 1978;

8 D. "great bodily harm" means an injury to a person  
9 that creates a high probability of death or that causes  
10 serious disfigurement or that results in permanent loss or  
11 impairment of the function of a member or organ of the  
12 person's body;

13 E. "persistent violent offender" means a person  
14 who is not amenable to rehabilitation and who has been  
15 convicted of:

- 16 (1) two or more class A violent offenses;
- 17 (2) one class A violent offense and two or  
18 more class B violent offenses; or
- 19 (3) four or more class B violent offenses;

20 and

21 F. "underlying sentence" means the total sentence  
22 imposed against a defendant for all convictions arising out of  
23 the same transaction or occurrence that includes a class A  
24 violent offense or class B violent offense.

25 Section 4. ~~[NEW MATERIAL]~~ VIOLENT OFFENSE CONVICTIONS--  
SENTENCING HEARING-- LIFE IMPRISONMENT. --

A. When a defendant has been convicted of a class  
A violent offense or a class B violent offense and the

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1 underlying sentence has been imposed, the state may petition  
 2 the court to conduct a hearing to determine if the defendant  
 3 is a persistent violent offender. The state shall file the  
 4 petition within thirty days of the entry of a judgment and  
 5 sentence for the class A violent offense or the class B  
 6 violent offense.

7 B. The court shall schedule a hearing to determine  
 8 if the defendant is a persistent violent offender and the  
 9 state and the defendant shall be notified of the date, time  
 10 and place of the persistent violent offender hearing not less  
 11 than thirty days prior to the scheduled hearing.

12 C. The state bears the burden of proving by clear  
 13 and convincing evidence that the defendant is a persistent  
 14 violent offender. Conviction of two or more class A violent  
 15 offenses, one class A violent offense and two or more class B  
 16 violent offenses, or four or more class B violent offenses is  
 17 sufficient to support a finding by clear and convincing  
 18 evidence that the defendant is not amenable to rehabilitation;  
 19 provided that the court is not required to make such a finding  
 20 and the court may also consider evidence presented by the  
 21 defendant to support a finding that he is amenable to  
 22 rehabilitation.

23 D. Upon a determination by the court that the  
 24 defendant is not amenable to rehabilitation and that each  
 25 requisite class A violent offense or class B violent offense  
 is part of a separate transaction or occurrence, the defendant  
 shall be found to be a persistent violent offender and the  
 defendant's sentence shall be increased to a sentence of life

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1 imprisonment. The life imprisonment sentence shall not be  
2 subject to parole pursuant to the provisions of 31-21-10 NMSA  
3 1978. The life imprisonment sentence shall be subject to the  
4 provisions of Section 31-21-25.1 NMSA 1978, regarding the  
5 medical and geriatric parole program.

6 E. When a defendant has a prior felony conviction  
7 rendered by a court of another state, the United States, a  
8 territory of the United States or the commonwealth of Puerto  
9 Rico, the felony conviction shall be considered a class A  
10 violent offense or a class B violent offense for the purpose  
11 of the Persistent Violent Offender Act if the felony offense  
12 would have been classified as a class A violent offense or a  
13 class B violent offense in New Mexico at the time of the  
14 defendant's conviction.

15 F. When a defendant is found to be a persistent  
16 violent offender as a result of being convicted of murder in  
17 the first degree as the predicate class A violent offense  
18 necessary for being found to be a persistent violent offender,  
19 the persistent violent offender determination does not  
20 preclude the imposition of a sentence of death upon the  
21 defendant pursuant to the provisions of Section 31-20A-1 NMSA  
22 1978.

23 Section 5. [NEW MATERIAL] REVIEW OF PERSISTENT VIOLENT  
24 OFFENDER LIFE IMPRISONMENT SENTENCE-- PAROLE-- REVOCATION OF  
25 PAROLE. --

26 A. A persistent violent offender may petition the  
27 parole board for review of the persistent violent offender's  
28 life imprisonment sentence upon serving the time set forth in

1 the underlying sentence, or upon serving ten actual years,  
 2 whichever period of time is greater.

3 B. When a persistent violent offender has been  
 4 convicted of murder in the first degree as the predicate class  
 5 A violent offense necessary for being found to be a persistent  
 6 violent offender and sentenced to life imprisonment for  
 7 committing murder in the first degree, the persistent violent  
 8 offender may petition the parole board for review of his  
 9 persistent violent offender's life imprisonment sentence after  
 10 serving thirty actual years of the persistent violent offender  
 life imprisonment sentence.

11 C. Upon the filing of a petition for review of a  
 12 persistent violent offender life imprisonment sentence, the  
 13 parole board shall schedule a hearing to consider the  
 14 petition. The chief public defender shall determine if the  
 15 persistent violent offender requires the assistance of counsel  
 16 at the hearing. The parole board, in conjunction with the  
 17 administrative office of the district attorneys, shall provide  
 18 notification of the scheduled review hearing to all victims of  
 the offenses for which the offender was sentenced as a  
 19 persistent violent offender.

20 D. The petitioner shall be notified of the date,  
 21 time and place for review of his persistent violent offender's  
 22 life imprisonment sentence not less than thirty days prior to  
 the scheduled hearing.

23 E. The petitioner bears the burden of proving by  
 24 clear and convincing evidence that the petitioner has been  
 25 rehabilitated and does not pose a substantial risk of violence

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1 to society.

2 F. If the parole board finds that the petitioner  
3 has been rehabilitated and does not pose a substantial risk of  
4 violence to society, the petitioner shall be released from  
5 imprisonment and placed on parole for a period of five years.

6 G. If a successful petitioner violates the  
7 conditions of the petitioner's parole by committing a capital  
8 felony, first degree felony, second degree felony or third  
9 degree felony, the parole board shall revoke the petitioner's  
10 parole and return the petitioner to prison to serve the  
11 persistent violent offender life imprisonment sentence, and  
12 that person shall not thereafter be allowed to file any  
13 further petitions for review.

14 H. If a successful petitioner violates the  
15 conditions of the petitioner's parole by committing a criminal  
16 offense other than a capital felony, first degree felony,  
17 second degree felony or third degree felony, or by committing  
18 a technical violation of the conditions of the petitioner's  
19 parole, the parole board may revoke the petitioner's parole  
20 and return the petitioner to prison to serve the remainder of  
21 the petitioner's parole period.

22 I. If the parole board denies the persistent  
23 violent offender's petition for review, the persistent violent  
24 offender may petition for review of the persistent violent  
25 offender's life imprisonment sentence at five-year intervals  
following denial of the petition.

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

1 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

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

13 (1) interview the [~~inmate~~] prisoner at the  
 14 institution where he is committed;

15 (2) consider all pertinent information  
 16 concerning the [~~inmate~~] prisoner, including:

17 (a) the circumstances of the offense;

18 (b) mitigating and aggravating  
 19 circumstances;

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

22 (d) whether the [~~inmate~~] prisoner is a  
 23 habitual offender;

24 (e) the reports filed under Section  
 25 31-21-9 NMSA 1978; and

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

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

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1 best interest of society and the [~~inmate~~] prisoner; and

2 (4) make a finding that the [~~inmate~~] prisoner  
3 is able and willing to fulfill the obligations of a law-  
4 abiding citizen.

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

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

16 C. [~~An inmate~~] A prisoner who was convicted of a  
17 first, second or third degree felony and who has served the  
18 sentence of imprisonment imposed by the court in a corrections  
19 facility designated by the corrections department shall be  
20 required to undergo a two-year period of parole. [~~An inmate~~]  
21 A prisoner who was convicted of a fourth degree felony and who  
22 has served the sentence of imprisonment imposed by the court  
23 in a corrections facility designated by the corrections  
24 department shall be required to undergo a one-year period of  
25 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

1 released, but shall be subject to the orders of the board.  
 2 The board shall furnish to each [~~inmate~~] prisoner as a  
 3 prerequisite to his release under its supervision a written  
 4 statement of the conditions of parole that shall be accepted  
 5 and agreed to by the [~~inmate~~] prisoner as evidenced by his  
 6 signature affixed to a duplicate copy to be retained in the  
 7 files of the board. The board shall also require as a  
 8 prerequisite to release the submission and approval of a  
 9 parole plan. If [~~an inmate~~] a prisoner refuses to affix his  
 10 signature to the written statement of the conditions of his  
 11 parole or does not have an approved parole plan, he shall not  
 12 be released and shall remain in the custody of the corrections  
 13 facility in which he has served his sentence, excepting  
 14 parole, until such time as the period of parole he was  
 15 required to serve, less meritorious deductions, if any,  
 16 expires, at which time he shall be released from that facility  
 17 without parole, or until such time that he evidences his  
 18 acceptance and agreement to the conditions of parole as  
 19 required or receives approval for his parole plan or both.  
 20 Time served from the date that [~~an inmate~~] a prisoner refuses  
 21 to accept and agree to the conditions of parole or fails to  
 22 receive approval for his parole plan shall reduce the period,  
 23 if any, to be served under parole at a later date. If the  
 24 district court has ordered that the [~~inmate~~] prisoner make  
 25 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~~]  
prisoner of the conditions of parole and his duties relating

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1 thereto.

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

6 F. Pursuant to the provisions of Section 31-18-15  
7 NMSA 1978, the board shall require the [~~inmate~~] prisoner as a  
8 condition of parole:

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

18 (2) to reimburse a law enforcement agency or  
19 local crime stopper program for the amount of any reward paid  
20 by the agency or program for information leading to his  
21 arrest, prosecution or conviction.

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

Section 7. REPEAL. -- Sections 31-18-23 through 31-18-26  
NMSA 1978 (being Laws 1994, Chapter 24, Sections 2 and 3 and

1 Laws 1996, Chapter 79, Sections 1 and 2, as amended) are  
2 repealed.

3 Section 8. EFFECTIVE DATE. --The effective date of the  
4 provisions of this act is July 1, 1999.

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HAPC/HB 226

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FORTY- FOURTH LEGI SLATURE  
FIRST SESSI ON, 1999

March 12, 1999

Mr. Presi dent:

Your JUDI CIARY COMMI TTEE, to whom has been referred

HOUSE APPROPRIATIONS AND FINANCE COMMI TTEE  
SUBSTITUTE FOR HOUSE BILL 226

has had it under consideration and reports same with  
recomm~~endation~~ that it DO PASS.

Respectfully submi tted,

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Mi chael S. Sanchez, Chai rman

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Adopted \_\_\_\_\_ Not

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(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Payne, Tsosie

Absent: None

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