

Opinion No. [30-59]

August 26, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Mr. Adolph L. Jensen, School of Law, University of Utah, Salt Lake City, Utah.

PAROLES

OPINION

Reference is made to yours of the 23rd inst. in which you request citations in re the parole laws of New Mexico and the habitual criminal act.

Our present parole law was enacted as chapter 32, Laws of 1909. Prior to that time there have been enactments providing for "good time" and other ways of recognizing and rewarding good conduct on the part of convicts but no real parole law. If you have the New Mexico Session Laws of 1909 you will there find the act complete. It now appears in the New Mexico Statutes Annotated, Codification of 1929, as sections somewhat scattered and sandwiched in with other sections. The principal sections, however, are included in the following: 130-164 to 130-171, inclusive.

The legislature in 1929 passed the habitual criminal act. It appears as chapter 58 of the Session Laws of 1929 and applies only to convictions of felony, that is, an offense which is a felony in this state, or if the conviction be in another state for an offense which if committed in this state would be a felony.

First convictions, of course, are punishable as provided in the several statutes pertaining to the different offenses. A second conviction carries a sentence of not less than half the longest term nor more than twice the longest term prescribed upon the first conviction.

For a third offense a term not less than the longest term nor more than three times the longest term prescribed upon the first conviction. For a fourth offense imprisonment for life.

The above penalties apply in offenses in which the penalty for the first conviction is less than life imprisonment. The accused need not have been indicted and convicted as a previous offender but if at any time even after sentence and conviction it is made to appear that a person convicted of a felony has previously been convicted it is the duty of the district attorney to bring the matter to the attention of the court by filing an information accusing the person of such previous conviction or convictions whereupon the accused may plead guilty or demand a trial by jury.