

SENATE BILL 247

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO JUVENILE JUSTICE; PROHIBITING THE IMPOSITION OF A SENTENCE OF LIFE WITHOUT PAROLE ON A CHILD; PROVIDING PAROLE PROCEDURES.

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

**SECTION 1.** Section 31-18-15.3 NMSA 1978 (being Laws 1993, Chapter 77, Section 3) is amended to read:

"31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

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A. An alleged serious youthful offender may be detained in any of the following places, prior to arraignment in metropolitan, magistrate or district court:

(1) a detention facility for delinquent children, licensed by the children, youth and families department;

(2) any other suitable place, other than a facility for the care and rehabilitation of delinquent children, that meets standards for detention facilities, as set forth in the Children's Code and federal law; or

(3) a county jail, if a facility described in Paragraph (1) or (2) of this subsection is not appropriate.

B. When an alleged serious youthful offender is detained in a juvenile detention facility prior to trial, the time spent in the juvenile detention facility shall count [~~towards~~] toward completion of any sentence imposed.

C. At arraignment, when a metropolitan or district court judge or a magistrate determines that an alleged serious youthful offender should remain in custody, the alleged serious youthful offender may be detained in an adult or juvenile detention facility, subject to the facility's accreditation and the provisions of applicable federal law.

D. When an alleged serious youthful offender is found guilty of first degree murder, the court shall sentence the offender pursuant to the provisions of the Criminal

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Sentencing Act; provided that a child upon whom an adult sentence is invoked shall not be sentenced to life imprisonment without possibility of release or parole. The court may sentence the offender to less than, but not exceeding, the mandatory term for an adult. The determination of guilt becomes a conviction for purposes of the Criminal Sentencing Act.

E. Prior to the sentencing of an alleged serious youthful offender who is convicted of first degree murder, adult probation services shall prepare a presentence report and submit the report to the court and the parties five days prior to the sentencing hearing.

F. When the alleged serious youthful offender is convicted of a lesser offense than first degree murder, the court shall provide for disposition of the offender pursuant to the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or 32A-2-20 NMSA 1978. When an offender is adjudicated as a delinquent child, the conviction shall not be used as a conviction for purposes of the Criminal Sentencing Act."

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

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

A. Except as provided in Section 31-21-10.2 NMSA 1978, an inmate of an institution who was sentenced to life imprisonment becomes eligible for a parole hearing after the

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inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

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

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

(a) the circumstances of the offense;  
(b) mitigating and aggravating circumstances;

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

(d) whether the inmate is a habitual offender;

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

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

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

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

If parole is denied, the inmate sentenced to life imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen

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any case in which a hearing has already been granted and parole denied.

B. Unless the board finds that it is in the best interest of society and the parolee to reduce the period of parole, a person who was sentenced to life imprisonment shall be required to undergo a minimum period of parole of five years. During the period of parole, the person shall be under the guidance and supervision of the board.

C. An inmate of an institution who was sentenced to life imprisonment without possibility of release or parole is not eligible for parole and shall remain incarcerated for the entirety of the inmate's natural life.

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

E. Every person while on parole shall remain in the

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legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section

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31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.

F. When a person on parole has performed the obligations of the person's release for the period of parole provided in this section, the board shall make a final order of discharge and issue the person a certificate of discharge.

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

(1) to pay the actual costs of parole services to the adult 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 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 the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change

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so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

(2) 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 the inmate's arrest, prosecution or conviction.

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

SECTION 3. A new section of the Probation and Parole Act, Section 31-21-10.2 NMSA 1978, is enacted to read:

"31-21-10.2. [NEW MATERIAL] PAROLE FOR CHILDREN SENTENCED AS ADULTS.--

A. A serious youthful offender sentenced under Section 31-18-15.3 NMSA 1978 or a youthful offender sentenced as an adult under Section 32A-2-20 NMSA 1978 shall be entitled to a parole hearing after serving SHPAC→ten←SHPAC SHPAC→fifteen←SHPAC years of the offender's sentence, unless the offender is subject to earlier eligibility for parole pursuant to another provision of law HJC→or on the recommendation of the warden of the facility in which the

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~~offender is incarcerated~~←HJC . The parole hearing shall occur whether the offender is serving sentences for multiple crimes concurrently or consecutively.

B. If parole is denied, the offender shall be entitled to a parole hearing not less than every Sfl1→two←Sfl1 Sfl1→five←Sfl1 years thereafter, unless the offender is subject to earlier eligibility for parole pursuant to any other provision of law.

C. During a parole eligibility hearing involving a person subject to a parole hearing pursuant to this section, the parole board shall take into consideration, in addition to other factors required by law to be considered by the board:

(1) a statement by a victim or a relative of a victim of the offense for which the offender is imprisoned;

(2) the offender's age at the time the offense was committed;

(3) the nature of the offense and the history and characteristics of the offender;

(4) whether the offender has substantially complied with the rules of the institution to which the offender has been confined, including whether the offender has completed an educational, vocational or other program, where available, while in a correctional facility or jail;

(5) whether the offender has demonstrated maturity, rehabilitation and a fitness to reenter society;

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(6) physical, mental or psychiatric reports or examinations of the offender conducted by licensed health care professionals;

(7) the offender's family and community circumstances at the time the offense was committed, including the offender's history of any abuse, trauma or involvement in the child welfare system;

(8) the extent of the offender's role in the offense and whether an adult or peer was involved in the offense;

(9) the diminished culpability of juveniles as compared to that of adults and the hallmark features of youth, including immaturity, impetuosity and failure to appreciate risks and consequences; and

(10) other information that the parole board deems relevant to its decision.

D. A person eligible for parole pursuant to this section shall be represented by counsel at all parole eligibility hearings.

E. A person eligible for or granted parole pursuant to this section shall be subject to those provisions of the Probation and Parole Act not in conflict with this section.

SJC→F. A victim or relative of a victim of the offense for which the offender is imprisoned may at any time file a written request with the parole board asking not to be

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contacted to submit a statement in future hearings as provided for by Paragraph (1) of Subsection C of this section. A victim or relative of a victim that has filed a request pursuant to this subsection may inform the parole board of a desire to be informed of future hearings.←SJC

SJC→F.←SJC SJC→G.←SJC The parole board shall annually conduct a review of all offenders currently serving an adult sentence for an offense committed as a child to ensure that parole eligibility hearings required pursuant to this section are timely conducted."

SECTION 4. Section 32A-2-20 NMSA 1978 (being Laws 1993, Chapter 77, Section 49, as amended) is amended to read:

"32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

A. The court has the discretion to invoke either an adult sentence or juvenile sanctions on a youthful offender. The children's court attorney shall file a notice of intent to invoke an adult sentence within ten working days of the filing of the petition; provided that the court may extend the time for filing of the notice of intent to invoke an adult sentence, for good cause shown, prior to the adjudicatory hearing. A preliminary hearing by the court or a hearing before a grand jury shall be held, within ten days after the filing of the intent to invoke an adult sentence, to determine whether probable cause exists to support the allegations contained in the petition.

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B. If the children's court attorney has filed a notice of intent to invoke an adult sentence and the child is adjudicated as a youthful offender, the court shall make the following findings in order to invoke an adult sentence:

(1) the child is not amenable to treatment or rehabilitation as a child in available facilities; and

(2) the child is not eligible for commitment to an institution for children with developmental disabilities or mental disorders.

C. In making the findings set forth in Subsection B of this section, the judge shall consider the following factors:

(1) the seriousness of the alleged offense;

(2) whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

(3) whether a firearm was used to commit the alleged offense;

(4) whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted;

(5) the maturity of the child as determined by consideration of the child's home, environmental situation, social and emotional health, pattern of living, brain development, trauma history and disability;

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(6) the record and previous history of the child;

(7) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child by the use of procedures, services and facilities currently available; and

(8) any other relevant factor, provided that factor is stated on the record.

D. If a child has previously been sentenced as an adult pursuant to the provisions of this section, there shall be a rebuttable presumption that the child is not amenable to treatment or rehabilitation as a child in available facilities.

E. If the court invokes an adult sentence, the court may sentence the child to less than, but shall not exceed, the mandatory adult sentence. A youthful offender given an adult sentence shall be treated as an adult offender and shall be transferred to the legal custody of an agency responsible for incarceration of persons sentenced to adult sentences. This transfer terminates the jurisdiction of the court over the child with respect to the delinquent acts alleged in the petition. A child upon whom an adult sentence is invoked shall not be sentenced to life imprisonment without the possibility of release or parole.

F. If a juvenile disposition is appropriate, the court shall follow the provisions set forth in Section 32A-2-19

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NMSA 1978. A youthful offender may be subject to extended commitment in the care of the department until the age of twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA 1978.

G. A child fourteen years of age or older, charged with first degree murder, but not convicted of first degree murder and found to have committed a youthful offender offense as set forth in Subsection [F] J of Section 32A-2-3 NMSA 1978, is subject to the dispositions set forth in this section.

H. A child fourteen years of age or older charged with first degree murder, but found to have committed a delinquent act that is neither first degree murder nor a youthful offender offense as set forth in Subsection [F] J of Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent subject to the dispositions set forth in Section 32A-2-19 NMSA 1978."

SECTION 5. APPLICABILITY.--The provisions of this act apply retroactively to all offenders currently serving an adult sentence for an offense committed as a child.