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AN ACT

RELATING TO JUVENILE JUSTICE REFORM; 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.--

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

1 toward completion of any sentence imposed.

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

8 D. When an alleged serious youthful offender is
9 found guilty of first degree murder, the court shall sentence
10 the offender pursuant to the provisions of the Criminal
11 Sentencing Act; provided that a serious youthful offender
12 given an adult sentence shall not be sentenced to life
13 imprisonment without the possibility of release or parole.
14 The court may sentence the offender to less than, but not
15 exceeding, the mandatory term for an adult. The
16 determination of guilt becomes a conviction for purposes of
17 the Criminal Sentencing Act.

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

23 F. When the alleged serious youthful offender is
24 convicted of a lesser offense than first degree murder, the
25 court shall provide for disposition of the offender pursuant

1 to the provisions of Section 32A-2-19 or
2 32A-2-20 NMSA 1978. When an offender is adjudicated as a
3 delinquent child, the conviction shall not be used as a
4 conviction for purposes of the Criminal Sentencing Act."

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

7 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

8 A. Except as provided in Section 31-21-10.2 NMSA
9 1978, an inmate of an institution who was sentenced to life
10 imprisonment becomes eligible for a parole hearing after the
11 inmate has served thirty years of the sentence. Before
12 ordering the parole of an inmate sentenced to life
13 imprisonment, the board shall:

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

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

18 (a) the circumstances of the offense;

19 (b) mitigating and aggravating
20 circumstances;

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

23 (d) whether the inmate is a habitual
24 offender;

25 (e) the reports filed under Section

1 31-21-9 NMSA 1978; and

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

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

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

10 If parole is denied, the inmate sentenced to life
11 imprisonment shall again become entitled to a parole hearing
12 at two-year intervals. The board may, on its own motion,
13 reopen any case in which a hearing has already been granted
14 and parole denied.

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

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

25 D. Except for certain sex offenders as provided in SB 64
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1 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of
2 a first, second or third degree felony and who has served the
3 sentence of imprisonment imposed by the court in an
4 institution designated by the corrections department shall be
5 required to undergo a two-year period of parole. An inmate
6 who was convicted of a fourth degree felony and who has
7 served the sentence of imprisonment imposed by the court in
8 an institution designated by the corrections department shall
9 be required to undergo a one-year period of parole. During
10 the period of parole, the person shall be under the guidance
11 and supervision of the board.

12 E. Every person while on parole shall remain in
13 the legal custody of the institution from which the person
14 was released, but shall be subject to the orders of the
15 board. The board shall furnish to each inmate as a
16 prerequisite to release under its supervision a written
17 statement of the conditions of parole that shall be accepted
18 and agreed to by the inmate as evidenced by the inmate's
19 signature affixed to a duplicate copy to be retained in the
20 files of the board. The board shall also require as a
21 prerequisite to release the submission and approval of a
22 parole plan. If an inmate refuses to affix the inmate's
23 signature to the written statement of the conditions of
24 parole or does not have an approved parole plan, the inmate
25 shall not be released and shall remain in the custody of the

1 institution in which the inmate has served the inmate's
2 sentence, excepting parole, until such time as the period of
3 parole the inmate was required to serve, less meritorious
4 deductions, if any, expires, at which time the inmate shall
5 be released from that institution without parole, or until
6 such time that the inmate evidences acceptance and agreement
7 to the conditions of parole as required or receives approval
8 for the inmate's parole plan or both. Time served from the
9 date that an inmate refuses to accept and agree to the
10 conditions of parole or fails to receive approval for the
11 inmate's parole plan shall reduce the period, if any, to be
12 served under parole at a later date. If the district court
13 has ordered that the inmate make restitution to a victim as
14 provided in Section 31-17-1 NMSA 1978, the board shall
15 include restitution as a condition of parole. The board
16 shall also personally apprise the inmate of the conditions of
17 parole and the inmate's duties relating to those conditions
18 of parole.

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

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

1 (1) to pay the actual costs of parole
2 services to the adult probation and parole division of the
3 corrections department for deposit to the corrections
4 department intensive supervision fund not exceeding one
5 thousand eight hundred dollars (\$1,800) annually to be paid
6 in monthly installments of not less than twenty-five dollars
7 (\$25.00) and not more than one hundred fifty dollars (\$150),
8 as set by the appropriate district supervisor of the adult
9 probation and parole division, based upon the financial
10 circumstances of the inmate. The inmate's payment of the
11 supervised parole costs shall not be waived unless the board
12 holds an evidentiary hearing and finds that the inmate is
13 unable to pay the costs. If the board waives the inmate's
14 payment of the supervised parole costs and the inmate's
15 financial circumstances subsequently change so that the
16 inmate is able to pay the costs, the appropriate district
17 supervisor of the adult probation and parole division shall
18 advise the board and the board shall hold an evidentiary
19 hearing to determine whether the waiver should be rescinded;
20 and

21 (2) to reimburse a law enforcement agency or
22 local crime stopper program for the amount of any reward paid
23 by the agency or program for information leading to the
24 inmate's arrest, prosecution or conviction.

25 H. The provisions of this section shall apply to

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

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

6 "31-21-10.2. PAROLE FOR CHILDREN SENTENCED AS ADULTS.--

7 A. Unless subject to earlier eligibility for
8 parole pursuant to another provision of law, a serious
9 youthful offender sentenced pursuant to Section 31-18-15.3
10 NMSA 1978 or a youthful offender sentenced as an adult
11 pursuant to Section 32A-2-20 NMSA 1978 shall be eligible for
12 parole and entitled to a parole hearing after the offender
13 has served:

14 (1) twenty-five years of the sentence if the
15 sentence is for two or more convictions of first degree
16 murder pursuant to Section 30-2-1 NMSA 1978;

17 (2) twenty years of the sentence if the
18 sentence is for one conviction of either first degree willful
19 and deliberate murder pursuant to Paragraph (1) of Subsection
20 A of Section 30-2-1 NMSA 1978 or first degree depraved-mind
21 murder pursuant to Paragraph (3) of Subsection A of Section
22 30-2-1 NMSA 1978; or

23 (3) fifteen years of the sentence if the
24 sentence is for a conviction pursuant to any other qualifying
25 provision of law.

1 Parole eligibility and a parole hearing shall occur
2 whether the offender is serving concurrent or consecutive
3 sentences for multiple convictions arising from the same
4 case. If the offender is serving sentences for convictions
5 arising from multiple cases, the time counted toward parole
6 eligibility for a particular case does not begin to accrue
7 until that sentence for the case is being served.

8 B. If parole is denied, the offender shall be
9 eligible for parole and entitled to a parole hearing every
10 five years thereafter, unless the offender is subject to
11 earlier eligibility for parole pursuant to any other
12 provision of law.

13 C. During a parole eligibility hearing involving
14 an offender subject to a parole hearing pursuant to this
15 section, the board shall take into consideration, in addition
16 to other factors the board is required by law to consider:

17 (1) where available, a statement by a victim
18 or a relative of a victim of the offense for which the
19 offender is imprisoned;

20 (2) the offender's age at the time of
21 committing the offense;

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

24 (4) whether the offender has substantially
25 complied with the rules of the institution to which the

1 offender has been confined, including whether the offender
2 has completed an educational, vocational or other program,
3 where available, while confined;

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

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

9 (7) the offender's family and community
10 circumstances at the time of committing the offense,
11 including the offender's history of abuse, trauma or
12 involvement in the child welfare system;

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

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

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

22 D. An offender eligible for parole pursuant to
23 this section shall be entitled to representation by counsel
24 at all parole eligibility hearings.

25 E. An offender eligible for or granted parole

1 pursuant to this section shall be subject to those provisions
2 of the Probation and Parole Act not in conflict with this
3 section.

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

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

11 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

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

24 B. If the children's court attorney has filed a
25 notice of intent to invoke an adult sentence and the child is

1 adjudicated as a youthful offender, the court shall make the
2 following findings in order to invoke an adult sentence:

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

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

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

11 (1) the seriousness of the alleged offense;

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

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

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

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

25 (6) the record and previous history of the

1 child;

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

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

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

13 E. If the court invokes an adult sentence, the
14 court may sentence the child to less than, but shall not
15 exceed, the mandatory adult sentence. A youthful offender
16 given an adult sentence shall be treated as an adult offender
17 and shall be transferred to the legal custody of an agency
18 responsible for incarceration of persons sentenced to adult
19 sentences. This transfer terminates the jurisdiction of the
20 court over the child with respect to the delinquent acts
21 alleged in the petition. A child given an adult sentence
22 shall not be sentenced to life imprisonment without the
23 possibility of release or parole.

24 F. If a juvenile disposition is appropriate, the
25 court shall follow the provisions set forth in Section

1 32A-2-19 NMSA 1978. A youthful offender may be subject to
2 extended commitment in the care of the department until the
3 age of twenty-one, pursuant to the provisions of Section
4 32A-2-23 NMSA 1978.

5 G. A child fourteen years of age or older, charged
6 with first degree murder, but not convicted of first degree
7 murder and found to have committed a youthful offender
8 offense as set forth in Subsection J of Section 32A-2-3 NMSA
9 1978, is subject to the dispositions set forth in this
10 section.

11 H. A child fourteen years of age or older charged
12 with first degree murder, but found to have committed a
13 delinquent act that is neither first degree murder nor a
14 youthful offender offense as set forth in Subsection J of
15 Section 32A-2-3 NMSA 1978, shall be adjudicated as a
16 delinquent subject to the dispositions set forth in Section
17 32A-2-19 NMSA 1978."

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