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HOUSE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

DISCUSSION DRAFT

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.--

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

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1 facility for the care and rehabilitation of delinquent
2 children, that meets standards for detention facilities, as set
3 forth in the Children's Code and federal law; or

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

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

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

16 D. When an alleged serious youthful offender is
17 found guilty of first degree murder, the court shall sentence
18 the offender pursuant to the provisions of the Criminal
19 Sentencing Act; provided that a child upon whom an adult
20 sentence is invoked shall not be sentenced to life imprisonment
21 without possibility of release or parole. The court may
22 sentence the offender to less than, but not exceeding, the
23 mandatory term for an adult. The determination of guilt
24 becomes a conviction for purposes of the Criminal Sentencing
25 Act.

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

6 F. When the alleged serious youthful offender is
7 convicted of a lesser offense than first degree murder, the
8 court shall provide for disposition of the offender pursuant to
9 the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or
10 32A-2-20 NMSA 1978. When an offender is adjudicated as a
11 delinquent child, the conviction shall not be used as a
12 conviction for purposes of the Criminal Sentencing Act."

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

15 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

16 A. Except as provided in Section 31-21-10.2 NMSA
17 1978, an inmate of an institution who was sentenced to life
18 imprisonment becomes eligible for a parole hearing after the
19 inmate has served thirty years of the sentence. Before
20 ordering the parole of an inmate sentenced to life
21 imprisonment, the board shall:

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

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

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1 (a) the circumstances of the offense;

2 (b) mitigating and aggravating

3 circumstances;

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

6 (d) whether the inmate is a habitual
7 offender;

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

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

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

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

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

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

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1 the guidance and supervision of the board.

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

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

18 E. Every person while on parole shall remain in the
19 legal custody of the institution from which the person was
20 released, but shall be subject to the orders of the board. The
21 board shall furnish to each inmate as a prerequisite to release
22 under its supervision a written statement of the conditions of
23 parole that shall be accepted and agreed to by the inmate as
24 evidenced by the inmate's signature affixed to a duplicate copy
25 to be retained in the files of the board. The board shall also

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

23 F. When a person on parole has performed the
24 obligations of the person's release for the period of parole
25 provided in this section, the board shall make a final order of

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1 discharge and issue the person a certificate of discharge.

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

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

24 (2) to reimburse a law enforcement agency or
25 local crime stopper program for the amount of any reward paid

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1 by the agency or program for information leading to the
2 inmate's arrest, prosecution or conviction.

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

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

9 "31-21-10.2. [NEW MATERIAL] PAROLE FOR CHILDREN SENTENCED
10 AS ADULTS.--

11 A. A serious youthful offender sentenced under
12 Section 31-18-15.3 NMSA 1978 or a youthful offender sentenced
13 as an adult under Section 32A-2-20 NMSA 1978 shall be entitled
14 to a parole hearing after serving fifteen years of the
15 offender's sentence, unless the offender is subject to earlier
16 eligibility for parole pursuant to another provision of law.
17 The parole hearing shall occur whether the offender is serving
18 sentences for multiple crimes concurrently or consecutively.

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

23 C. During a parole eligibility hearing involving a
24 person subject to a parole hearing pursuant to this section,
25 the board shall take into consideration, in addition to other

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1 factors required by law to be considered by the board:

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

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

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

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

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

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

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

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

25 (9) the diminished culpability of juveniles as

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1 compared to that of adults and the hallmark features of youth,
2 including immaturity, impetuosity and failure to appreciate
3 risks and consequences; and

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

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

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

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

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

18 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

19 A. The court has the discretion to invoke either an
20 adult sentence or juvenile sanctions on a youthful offender.
21 The children's court attorney shall file a notice of intent to
22 invoke an adult sentence within ten working days of the filing
23 of the petition; provided that the court may extend the time
24 for filing of the notice of intent to invoke an adult sentence,
25 for good cause shown, prior to the adjudicatory hearing. A

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1 preliminary hearing by the court or a hearing before a grand
2 jury shall be held, within ten days after the filing of the
3 intent to invoke an adult sentence, to determine whether
4 probable cause exists to support the allegations contained in
5 the petition.

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

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

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

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

18 (1) the seriousness of the alleged offense;

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

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

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

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1 resulted;

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

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

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

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

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

18 E. If the court invokes an adult sentence, the
19 court may sentence the child to less than, but shall not
20 exceed, the mandatory adult sentence. A youthful offender
21 given an adult sentence shall be treated as an adult offender
22 and shall be transferred to the legal custody of an agency
23 responsible for incarceration of persons sentenced to adult
24 sentences. This transfer terminates the jurisdiction of the
25 court over the child with respect to the delinquent acts

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1 alleged in the petition. A child upon whom an adult sentence
2 is invoked shall not be sentenced to life imprisonment without
3 the possibility of release or parole.

4 F. If a juvenile disposition is appropriate, the
5 court shall follow the provisions set forth in Section 32A-2-19
6 NMSA 1978. A youthful offender may be subject to extended
7 commitment in the care of the department until the age of
8 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA
9 1978.

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

15 H. A child fourteen years of age or older charged
16 with first degree murder, but found to have committed a
17 delinquent act that is neither first degree murder nor a
18 youthful offender offense as set forth in Subsection [I] J of
19 Section 32A-2-3 NMSA 1978, shall be adjudicated as a delinquent
20 subject to the dispositions set forth in Section 32A-2-19 NMSA
21 1978."

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

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