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SENATE BILL

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL SENTENCING; REMOVING THE MANDATORY PAROLE  
PROVISION FOR PERSONS SENTENCED TO ONE YEAR OR LESS IN PRISON;  
PROHIBITING THE IMPOSITION OF PAROLE IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977,  
Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,  
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the  
death of a child, life imprisonment;

(2) for a first degree felony for aggravated

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1 criminal sexual penetration, life imprisonment;

2 (3) for a first degree felony, eighteen years  
3 imprisonment;

4 (4) for a second degree felony resulting in  
5 the death of a human being, fifteen years imprisonment;

6 (5) for a second degree felony for a sexual  
7 offense against a child, fifteen years imprisonment;

8 (6) for a second degree felony for sexual  
9 exploitation of children, twelve years imprisonment;

10 (7) for a second degree felony, nine years  
11 imprisonment;

12 (8) for a third degree felony resulting in the  
13 death of a human being, six years imprisonment;

14 (9) for a third degree felony for a sexual  
15 offense against a child, six years imprisonment;

16 (10) for a third degree felony for sexual  
17 exploitation of children, eleven years imprisonment;

18 (11) for a third degree felony, three years  
19 imprisonment;

20 (12) for a fourth degree felony for sexual  
21 exploitation of children, ten years imprisonment; or

22 (13) for a fourth degree felony, eighteen  
23 months imprisonment.

24 B. The appropriate basic sentence of imprisonment  
25 shall be imposed upon a person convicted and sentenced pursuant

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1 to Subsection A of this section, unless the court alters the  
2 sentence pursuant to the provisions of the Criminal Sentencing  
3 Act.

4 C. A period of parole shall be imposed only for  
5 felony convictions wherein a person is sentenced to  
6 imprisonment of more than one year, unless the parties to a  
7 proceeding agree that a period of parole should be imposed. If  
8 a period of parole is imposed, the court shall include in the  
9 judgment and sentence of each person convicted and sentenced to  
10 imprisonment in a corrections facility designated by the  
11 corrections department authority for a period of parole to be  
12 served in accordance with the provisions of Section 31-21-10  
13 NMSA 1978 after the completion of any actual time of  
14 imprisonment and authority to require, as a condition of  
15 parole, the payment of the costs of parole services and  
16 reimbursement to a law enforcement agency or local crime  
17 stopper program in accordance with the provisions of that  
18 section. If imposed, the period of parole shall be deemed to  
19 be part of the sentence of the convicted person in addition to  
20 the basic sentence imposed pursuant to Subsection A of this  
21 section together with alterations, if any, pursuant to the  
22 provisions of the Criminal Sentencing Act.

23 D. When a court imposes a sentence of imprisonment  
24 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or  
25 31-18-17 NMSA 1978 and suspends or defers the basic sentence of

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1 imprisonment provided pursuant to the provisions of Subsection  
2 A of this section, the period of parole shall be served in  
3 accordance with the provisions of Section 31-21-10 NMSA 1978  
4 for the degree of felony for the basic sentence for which the  
5 inmate was convicted. For the purpose of designating a period  
6 of parole, a court shall not consider that the basic sentence  
7 of imprisonment was suspended or deferred and that the inmate  
8 served a period of imprisonment pursuant to the provisions of  
9 the Criminal Sentencing Act.

10 E. The court may, in addition to the imposition of  
11 a basic sentence of imprisonment, impose a fine not to exceed:

12 (1) for a first degree felony resulting in the  
13 death of a child, seventeen thousand five hundred dollars  
14 (\$17,500);

15 (2) for a first degree felony for aggravated  
16 criminal sexual penetration, seventeen thousand five hundred  
17 dollars (\$17,500);

18 (3) for a first degree felony, fifteen  
19 thousand dollars (\$15,000);

20 (4) for a second degree felony resulting in  
21 the death of a human being, twelve thousand five hundred  
22 dollars (\$12,500);

23 (5) for a second degree felony for a sexual  
24 offense against a child, twelve thousand five hundred dollars  
25 (\$12,500);

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- 1 (6) for a second degree felony for sexual  
2 exploitation of children, five thousand dollars (\$5,000);  
3 (7) for a second degree felony, ten thousand  
4 dollars (\$10,000);  
5 (8) for a third degree felony resulting in the  
6 death of a human being, five thousand dollars (\$5,000);  
7 (9) for a third degree felony for a sexual  
8 offense against a child, five thousand dollars (\$5,000);  
9 (10) for a third degree felony for sexual  
10 exploitation of children, five thousand dollars (\$5,000);  
11 (11) for a third or fourth degree felony, five  
12 thousand dollars (\$5,000); or  
13 (12) for a fourth degree felony for sexual  
14 exploitation of children, five thousand dollars (\$5,000).

15 F. When the court imposes a sentence of  
16 imprisonment for a felony offense, the court shall indicate  
17 whether or not the offense is a serious violent offense, as  
18 defined in Section 33-2-34 NMSA 1978. The court shall inform  
19 an offender that the offender's sentence of imprisonment is  
20 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37  
21 and 33-2-38 NMSA 1978. If the court fails to inform an  
22 offender that the offender's sentence is subject to those  
23 provisions or if the court provides the offender with erroneous  
24 information regarding those provisions, the failure to inform  
25 or the error shall not provide a basis for a writ of habeas

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1 corpus.

2 G. No later than October 31 of each year, the  
3 New Mexico sentencing commission shall provide a written report  
4 to the secretary of corrections, all New Mexico criminal court  
5 judges, the administrative office of the district attorneys and  
6 the chief public defender. The report shall specify the  
7 average reduction in the sentence of imprisonment for serious  
8 violent offenses and nonviolent offenses, as defined in Section  
9 33-2-34 NMSA 1978, due to meritorious deductions earned by  
10 prisoners during the previous fiscal year pursuant to the  
11 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
12 NMSA 1978. The corrections department shall allow the  
13 commission access to documents used by the department to  
14 determine earned meritorious deductions for prisoners."

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

17 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

18 A. An inmate of an institution who was sentenced to  
19 life imprisonment becomes eligible for a parole hearing after  
20 the inmate has served thirty years of the sentence. Before  
21 ordering the parole of an inmate sentenced to life  
22 imprisonment, the board shall:

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

25 (2) consider all pertinent information

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1 concerning the inmate, including:

2 (a) the circumstances of the offense;

3 (b) mitigating and aggravating  
4 circumstances;

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

7 (d) whether the inmate is [~~a~~] an  
8 habitual offender;

9 (e) the reports filed under Section  
10 31-21-9 NMSA 1978; and

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

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

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

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

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

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1 years. During the period of parole, the person shall be under  
2 the guidance and supervision of the board.

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

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

22 E. Every person while on parole shall remain in the  
23 legal custody of the institution from which the person was  
24 released but shall be subject to the orders of the board. The  
25 board shall furnish to each inmate as a prerequisite to release

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

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1 inmate's duties relating thereto.

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

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

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

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1 hearing to determine whether the waiver should be rescinded;  
2 and

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

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

11 SECTION 3. EFFECTIVE DATE.--The effective date of the  
12 provisions of this act is July 1, 2019.