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HOUSE BILL 33

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,  
2000**

INTRODUCED BY  
Joe Mohorovic

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING THAT THE SUPREME COURT SHALL ISSUE A FINAL ADJUDICATION WITHIN TWO YEARS OF THE FILING OF A NOTICE OF APPEAL IN A CAPITAL FELONY CASE; PROVIDING ADDITIONAL AGGRAVATING CIRCUMSTANCES THAT MAY BE CONSIDERED DURING SENTENCING PROCEEDINGS IN A CAPITAL FELONY CASE; AMENDING A SECTION OF THE NMSA 1978.

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

Section 1. Section 31-20A-4 NMSA 1978 (being Laws 1979, Chapter 150, Section 5) is amended to read:

"31-20A-4. REVIEW OF JUDGMENT AND SENTENCE.--

A. The judgment of conviction and sentence of death shall be automatically reviewed by the supreme court of the state of New Mexico and, within two years of the filing of a notice of appeal, the supreme court shall issue a final adjudication.

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1           B. In addition to the other matters on appeal, the  
2 supreme court shall rule on the validity of the death  
3 sentence.

4           C. The death penalty shall not be imposed if:

5                   (1) the evidence does not support the  
6 finding of a statutory aggravating circumstance;

7                   (2) the evidence supports a finding that the  
8 mitigating circumstances outweigh the aggravating  
9 circumstances;

10                  (3) the sentence of death was imposed under  
11 the influence of passion, prejudice or any other arbitrary  
12 factor; or

13                  (4) the sentence of death is excessive or  
14 disproportionate to the penalty imposed in similar cases,  
15 considering both the crime and the defendant.

16           D. No error in the sentencing proceeding shall  
17 result in the reversal of the conviction of a capital felony.  
18 If the trial court is reversed on appeal because of error  
19 only in the sentencing proceeding, the supreme court shall  
20 remand solely for a new sentencing proceeding. The new  
21 sentencing proceeding ordered and mandated shall apply only  
22 to the issue of punishment.

23           E. In cases of remand for a new sentencing  
24 proceeding, all exhibits and a transcript of all testimony  
25 and other evidence admitted in the prior trial and sentencing  
proceeding shall be admissible in the new sentencing  
proceeding, and:

underscored material = new  
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1 (1) if the sentencing proceeding was before  
2 a jury, a new jury shall be impaneled for the new sentencing  
3 proceeding;

4 (2) if the sentencing proceeding was before  
5 a judge, the original trial judge shall conduct the new  
6 sentencing proceeding; or

7 (3) if the sentencing proceeding was before  
8 a judge and the original trial judge is unable or unavailable  
9 to conduct a new sentencing proceeding, then another judge  
10 shall be designated to conduct the new sentencing proceeding,  
11 and the parties are entitled to disqualify the new judge on  
12 the grounds set forth in Section 38-3-9 NMSA 1978 before the  
13 newly designated judge exercises any discretion."

14 Section 2. Section 31-20A-5 NMSA 1978 (being Laws 1979,  
15 Chapter 150, Section 6, as amended) is amended to read:

16 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--The aggravating  
17 circumstances to be considered by the sentencing court or  
18 jury pursuant to the provisions of Section 31-20A-2 NMSA 1978  
19 are limited to the following:

20 A. the victim was a peace officer who was acting  
21 in the lawful discharge of an official duty when he was  
22 murdered;

23 B. the murder was committed with intent to kill in  
24 the commission of or attempt to commit [~~kidnaping~~]  
25 kidnapping, criminal sexual contact of a minor or criminal  
sexual penetration;

C. the murder was committed with the intent to

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1 kill by the defendant while attempting to escape from a penal  
2 institution of New Mexico;

3 D. while incarcerated in a penal institution in  
4 New Mexico, the defendant, with the intent to kill, murdered  
5 a person who was at the time incarcerated in or lawfully on  
6 the premises of a penal institution in New Mexico. As used  
7 in this subsection, "penal institution" includes facilities  
8 under the jurisdiction of the corrections [~~and criminal~~  
9 ~~rehabilitation~~] department and county and municipal jails;

10 E. while incarcerated in a penal institution in  
11 New Mexico, the defendant, with the intent to kill, murdered  
12 an employee of the corrections [~~and criminal rehabilitation~~]  
13 department;

14 F. the capital felony was committed for hire;  
15 [~~and~~]

16 G. the capital felony was murder of a witness to a  
17 crime or any person likely to become a witness to a crime,  
18 for the purpose of preventing report of the crime or  
19 testimony in any criminal proceeding or for retaliation for  
20 the victim having testified in any criminal proceeding;

21 H. the defendant, with the intent to kill,  
22 murdered a child less than ten years of age;

23 I. the defendant, with the intent to kill,  
24 committed two or more murders during the same transaction or  
25 occurrence; and

J. the defendant, with the intent to kill,  
committed two or more murders within a twenty-four hour

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period."

Section 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000.

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