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**HOUSE BILL 215**

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

**INTRODUCED BY**

**Al Park**

**AN ACT**

**RELATING TO CRIMINAL SENTENCING; REQUIRING A CAPITAL FELONY  
OFFENDER, A THREE-STRIKES OFFENDER OR A REPEAT VIOLENT SEXUAL  
OFFENDER TO REMAIN INCARCERATED FOR THE ENTIRETY OF THE  
OFFENDER'S NATURAL LIFE; AMENDING AND REPEALING SECTIONS OF THE  
NMSA 1978.**

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

**Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994,  
Chapter 24, Section 2, as amended) is amended to read:**

**"31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
LIFE IMPRISONMENT--EXCEPTION. --**

**A. When a defendant is convicted of a third violent  
felony, and each violent felony conviction is part of a  
separate transaction or occurrence, and at least the third  
violent felony conviction is in New Mexico, the defendant**

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1 shall, in addition to the sentence imposed for the third  
2 violent felony conviction when that sentence does not result in  
3 death, be punished by a sentence of life imprisonment. [~~The~~  
4 ~~life imprisonment sentence shall be subject to parole pursuant~~  
5 ~~to the provisions of Section 31-21-10 NMSA 1978.~~]

6 B. The sentence of life imprisonment shall be  
7 imposed after a sentencing hearing, separate from the trial or  
8 guilty plea proceeding resulting in the third violent felony  
9 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
10 1978.

11 C. For the purpose of this section, a violent  
12 felony conviction incurred by a defendant before he reaches the  
13 age of eighteen shall not count as a violent felony conviction.

14 D. When a defendant has a felony conviction from  
15 another state, the felony conviction shall be considered a  
16 violent felony for the purposes of the Criminal Sentencing Act  
17 if that crime would be considered a violent felony in New  
18 Mexico.

19 E. As used in the Criminal Sentencing Act:

20 (1) "great bodily harm" means an injury to the  
21 person that creates a high probability of death or that causes  
22 serious disfigurement or that results in permanent loss or  
23 impairment of the function of any member or organ of the body;  
24 and

25 (2) "violent felony" means:

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1 (a) murder in the first or second  
2 degree, as provided in Section 30-2-1 NMSA 1978;

3 (b) shooting at or from a motor vehicle  
4 resulting in great bodily harm, as provided in Subsection B of  
5 Section 30-3-8 NMSA 1978;

6 (c) kidnapping resulting in great bodily  
7 harm inflicted upon the victim by his captor, as provided in  
8 [~~Subsection B of~~] Section 30-4-1 NMSA 1978; [~~and~~]

9 (d) criminal sexual penetration, as  
10 provided in Subsection C or Paragraph (5) or (6) of Subsection  
11 D of Section 30-9-11 NMSA 1978; and

12 (e) robbery while armed with a deadly  
13 weapon resulting in great bodily harm as provided in Section  
14 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA  
15 1978. "

16 Section 2. Section 31-18-25 NMSA 1978 (being Laws 1996,  
17 Chapter 79, Section 1, as amended) is amended to read:

18 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--  
19 MANDATORY LIFE IMPRISONMENT--EXCEPTION. --

20 A. When a defendant is convicted of a second  
21 violent sexual offense, and each violent sexual offense  
22 conviction is part of a separate transaction or occurrence, and  
23 at least the second violent sexual offense conviction is in New  
24 Mexico, the defendant shall, in addition to the punishment  
25 imposed for the second violent sexual offense conviction, be

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1 punished by a sentence of life imprisonment. [~~The life~~  
2 ~~imprisonment sentence shall be subject to parole pursuant to~~  
3 ~~the provisions of Section 31-21-10 NMSA 1978.~~

4 ~~B. Notwithstanding the provisions of Subsection A~~  
5 ~~of this section, when a defendant is convicted of a second~~  
6 ~~violent sexual offense, and each violent sexual offense~~  
7 ~~conviction is part of a separate transaction or occurrence, and~~  
8 ~~the victim of each violent sexual offense was less than~~  
9 ~~thirteen years of age at the time of the offense, and at least~~  
10 ~~the second violent sexual offense conviction is in New Mexico,~~  
11 ~~the defendant shall be punished by a sentence of life~~  
12 ~~imprisonment without the possibility of parole.~~

13 ~~C.]~~ B. The sentence of life imprisonment shall be  
14 imposed after a sentencing hearing, separate from the trial or  
15 guilty plea proceeding resulting in the second violent sexual  
16 offense conviction, pursuant to the provisions of Section  
17 31-18-26 NMSA 1978.

18 [~~D.]~~ C. For the purposes of this section, a violent  
19 sexual offense conviction incurred by a defendant before he  
20 reaches the age of eighteen shall not count as a violent sexual  
21 offense conviction.

22 [~~E.]~~ D. When a defendant has a felony conviction  
23 from another state, the felony conviction shall be considered a  
24 violent sexual offense for the purposes of the Criminal  
25 Sentencing Act if the crime would be considered a violent

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1 sexual offense in New Mexico.

2 [F-] E. As used in the Criminal Sentencing Act,  
3 "violent sexual offense" means:

4 (1) criminal sexual penetration in the first  
5 degree, as provided in Subsection C of Section 30-9-11 NMSA  
6 1978; or

7 (2) criminal sexual penetration in the second  
8 degree, as provided in Subsection D of Section 30-9-11 NMSA  
9 1978. "

10 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,  
11 Chapter 28, Section 1, as amended) is amended to read:

12 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

13 A. An inmate of an institution who was sentenced to  
14 life imprisonment as the result of the commission of a capital  
15 felony, who was convicted of three violent felonies and  
16 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978  
17 or who was convicted of two violent sexual offenses and  
18 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
19 1978 and Section 31-18-26 NMSA 1978 [~~becomes eligible for a~~  
20 ~~parole hearing after he has served thirty years of his~~  
21 ~~sentence. Before ordering the parole of an inmate sentenced to~~  
22 ~~life imprisonment, the board shall:~~

23 (1) ~~interview the inmate at the institution~~  
24 ~~where he 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 habitual~~  
8 ~~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 convicted of a capital felony shall be~~  
25 ~~required to undergo a minimum period of parole of five years.~~

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1 ~~During the period of parole, the person shall be under the~~  
2 ~~guidance and supervision of the board]~~ is not eligible for  
3 parole and shall remain incarcerated for the entirety of his  
4 natural life.

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

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

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

20 [~~E.-~~] D. When a person on parole has performed the  
21 obligations of his release for the period of parole provided in  
22 this section, the board shall make a final order of discharge  
23 and issue him a certificate of discharge.

24 [~~F.-~~] E. Pursuant to the provisions of Section  
25 31-18-15 NMSA 1978, the board shall require the inmate as a

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1 condition of parole:

2 (1) to pay the actual costs of his parole  
3 services to the adult probation and parole division of the  
4 corrections department for deposit to the corrections  
5 department intensive supervision fund not exceeding one  
6 thousand twenty dollars (\$1,020) annually to be paid in monthly  
7 installments of not less than fifteen dollars (\$15.00) and not  
8 more than eighty-five dollars (\$85.00), subject to modification  
9 by the adult probation and parole division on the basis of  
10 changed financial circumstances; and

11 (2) to reimburse a law enforcement agency or  
12 local crime stopper program for the amount of any reward paid  
13 by the agency or program for information leading to his arrest,  
14 prosecution or conviction.

15 [~~G.~~] F. The provisions of this section shall apply  
16 to all inmates except geriatric, permanently incapacitated and  
17 terminally ill inmates eligible for the medical and geriatric  
18 parole program as provided by the Parole Board Act. "

19 Section 4. REPEAL. -- Section 31-18-14.1 NMSA 1978 (being  
20 Laws 2001, Chapter 128, Section 1) is repealed.

21 Section 5. EFFECTIVE DATE. -- The effective date of the  
22 provisions of this act is July 1, 2004.