

HOUSE BILL 285

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Gail Chasey

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE.

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

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979, Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES.--~~[A.]~~
When a defendant has been convicted of a capital felony, ~~[he]~~
the defendant shall be ~~[punished by life imprisonment or death.~~
~~The punishment shall be imposed after a sentencing hearing~~
~~separate from the trial or guilty plea proceeding. However, if~~
~~the defendant has not reached the age of majority at the time~~
~~of the commission of the capital felony for which he was~~
~~convicted, he may be sentenced to life imprisonment but shall~~

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1 ~~not be punished by death.~~

2 ~~B. In the event the death penalty in a capital~~
3 ~~felony case is held to be unconstitutional or otherwise~~
4 ~~invalidated by the supreme court of the state of New Mexico or~~
5 ~~the supreme court of the United States, the person previously~~
6 ~~sentenced to death for a capital felony shall be] sentenced to~~
7 life imprisonment or life imprisonment without possibility of
8 release or parole."

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

11 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
12 LIFE IMPRISONMENT--EXCEPTION.--

13 A. When a defendant is convicted of a third violent
14 felony, and each violent felony conviction is part of a
15 separate transaction or occurrence, and at least the third
16 violent felony conviction is in New Mexico, the defendant
17 shall, in addition to the sentence imposed for the third
18 violent conviction [~~when that sentence does not result in~~
19 ~~death~~], be punished by a sentence of life imprisonment. The
20 life imprisonment sentence shall be subject to parole pursuant
21 to the provisions of Section 31-21-10 NMSA 1978.

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

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1 1978.

2 C. For the purpose of this section, a violent
3 felony conviction incurred by a defendant before [~~he~~] the
4 defendant reaches the age of eighteen shall not count as a
5 violent felony conviction.

6 D. When a defendant has a felony conviction from
7 another state, the felony conviction shall be considered a
8 violent felony for the purposes of the Criminal Sentencing Act
9 if that crime would be considered a violent felony in New
10 Mexico.

11 E. As used in the Criminal Sentencing Act:

12 (1) "great bodily harm" means an injury to the
13 person that creates a high probability of death or that causes
14 serious disfigurement or that results in permanent loss or
15 impairment of the function of any member or organ of the body;
16 and

17 (2) "violent felony" means:

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

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

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

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1 (d) criminal sexual penetration, as
2 provided in Subsection C or D or Paragraph (5) or (6) of
3 Subsection [~~D~~] E of Section 30-9-11 NMSA 1978; and

4 (e) robbery while armed with a deadly
5 weapon resulting in great bodily harm as provided in Section
6 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
7 1978."

8 Section 3. Section 31-20A-2 NMSA 1978 (being Laws 1979,
9 Chapter 150, Section 3) is amended to read:

10 "31-20A-2. CAPITAL FELONY--DETERMINATION OF SENTENCE.--

11 ~~[A. Capital sentencing deliberations shall be~~
12 ~~guided by the following considerations:~~

13 ~~(1) whether aggravating circumstances exist as~~
14 ~~enumerated in Section 6 of this act;~~

15 ~~(2) whether mitigating circumstances exist as~~
16 ~~enumerated in Section 7 of this act; and~~

17 ~~(3) whether other mitigating circumstances~~
18 ~~exist.~~

19 ~~B. After weighing the aggravating circumstances and~~
20 ~~the mitigating circumstances, weighing them against each other,~~
21 ~~and considering both the defendant and the crime, the jury or~~
22 ~~judge shall determine whether the defendant should be sentenced~~
23 ~~to death or life imprisonment.] If a jury finds, beyond a~~

24 reasonable doubt, that one or more aggravating circumstances
25 exist, as enumerated in Section 31-20A-5 NMSA 1978, the

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1 defendant shall be sentenced to life imprisonment without
2 possibility of release or parole. If the jury does not make
3 the finding that one or more aggravating circumstances exist,
4 the defendant shall be sentenced to life imprisonment."

5 Section 4. 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. An inmate of an institution who was sentenced to
9 life imprisonment becomes eligible for a parole hearing after
10 the inmate has served thirty years of the sentence. Before
11 ordering the parole of an inmate sentenced to life
12 imprisonment, the board shall:

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

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

17 (a) the circumstances of the offense;

18 (b) mitigating and aggravating
19 circumstances;

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

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

24 (e) the reports filed under Section
25 31-21-9 NMSA 1978; and

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

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

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

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

12 B. Unless the board finds that it is in the best
13 interest of society and the parolee to reduce the period of
14 parole, a person who was [~~convicted of a capital felony~~]
15 sentenced to life imprisonment shall be required to undergo a
16 minimum period of parole of five years. During the period of
17 parole, the person shall be under the guidance and supervision
18 of the board.

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

23 [C.] D. Except for certain sex offenders as
24 provided in Section 31-21-10.1 NMSA 1978, an inmate who was
25 convicted of a first, second or third degree felony and who has

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1 served the sentence of imprisonment imposed by the court in an
2 institution designated by the corrections department shall be
3 required to undergo a two-year period of parole. An inmate who
4 was convicted of a fourth degree felony and who has served the
5 sentence of imprisonment imposed by the court in an institution
6 designated by the corrections department shall be required to
7 undergo a one-year period of parole. During the period of
8 parole, the person shall be under the guidance and supervision
9 of the board.

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

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

15 ~~[E.]~~ F. When a person on parole has performed the
16 obligations of the person's release for the period of parole
17 provided in this section, the board shall make a final order of
18 discharge and issue the person a certificate of discharge.

19 ~~[F.]~~ G. Pursuant to the provisions of Section
20 31-18-15 NMSA 1978, the board shall require the inmate as a
21 condition of parole:

22 (1) to pay the actual costs of parole services
23 to the adult probation and parole division of the corrections
24 department for deposit to the corrections department intensive
25 supervision fund not exceeding one thousand eight hundred

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

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

20 [~~G.~~] H. The provisions of this section shall
21 apply to all inmates except geriatric, permanently
22 incapacitated and terminally ill inmates eligible for the
23 medical and geriatric parole program as provided by the
24 Parole Board Act."

25 Section 5. REPEAL.--Sections 31-14-1 through 31-14-16,

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1 Section 31-18-14.1, Section 31-20A-1, Sections 31-20A-2.1
2 through 31-20A-4 and Section 31-20A-6 NMSA 1978 (being Laws
3 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter
4 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955,
5 Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69,
6 Sections 12 and 13, Laws 2001, Chapter 128, Section 1, Laws
7 1979, Chapter 150, Section 2, Laws 1991, Chapter 30, Section
8 1 and Laws 1979, Chapter 150, Sections 4, 5 and 7, as
9 amended) are repealed.

10 Section 6. APPLICABILITY.--The provisions of this act
11 apply to crimes committed on or after July 1, 2009.

12 Section 7. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2009.