

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.--
When a defendant has been convicted of a capital felony, the defendant shall be sentenced to life imprisonment or life imprisonment without possibility of release or parole."

Section 2. 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 shall, in addition to the sentence imposed for the third violent conviction, be punished by a sentence of life imprisonment. The life imprisonment sentence shall be subject to parole pursuant to the provisions of Section 31-21-10 NMSA 1978.

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

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

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

E. As used in the Criminal Sentencing Act:

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

(2) "violent felony" means:

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

(b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of

Section 30-3-8 NMSA 1978;

(c) kidnapping resulting in great bodily harm inflicted upon the victim by the victim's captor, as provided in Subsection B of Section 30-4-1 NMSA 1978;

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

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

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

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

If a jury finds, beyond a reasonable doubt, that one or more aggravating circumstances exist, as enumerated in Section 31-20A-5 NMSA 1978, the defendant shall be sentenced to life imprisonment without possibility of release or parole. If the jury does not make the finding that one or more aggravating circumstances exist, the defendant shall be sentenced to life imprisonment."

Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980, Chapter 28, Section 1, as amended) is amended to read:

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

A. An inmate of an institution who was sentenced

to life imprisonment becomes eligible for a parole hearing after the inmate has served thirty years of the sentence. Before ordering the parole of an inmate sentenced to life imprisonment, the board shall:

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

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

(a) the circumstances of the offense;

(b) mitigating and aggravating circumstances;

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

(d) whether the inmate is a habitual offender;

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

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

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

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

If parole is denied, the inmate sentenced to life

imprisonment shall again become entitled to a parole hearing at two-year intervals. The board may, on its own motion, reopen any case in which a hearing has already been granted and parole denied.

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

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

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

supervision of the board.

E. Every person while on parole shall remain in the legal custody of the institution from which the person was released, but shall be subject to the orders of the board. The board shall furnish to each inmate as a prerequisite to release under its supervision a written statement of the conditions of parole that shall be accepted and agreed to by the inmate as evidenced by the inmate's signature affixed to a duplicate copy to be retained in the files of the board. The board shall also require as a prerequisite to release the submission and approval of a parole plan. If an inmate refuses to affix the inmate's signature to the written statement of the conditions of parole or does not have an approved parole plan, the inmate shall not be released and shall remain in the custody of the institution in which the inmate has served the inmate's sentence, excepting parole, until such time as the period of parole the inmate was required to serve, less meritorious deductions, if any, expires, at which time the inmate shall be released from that institution without parole, or until such time that the inmate evidences acceptance and agreement to the conditions of parole as required or receives approval for the inmate's parole plan or both. Time served from the date that an inmate refuses to accept and agree to the conditions of parole or fails to receive approval for the inmate's parole plan shall reduce the

period, if any, to be served under parole at a later date. If the district court has ordered that the inmate make restitution to a victim as provided in Section 31-17-1 NMSA 1978, the board shall include restitution as a condition of parole. The board shall also personally apprise the inmate of the conditions of parole and the inmate's duties relating thereto.

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

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

(1) to pay the actual costs of parole services to the adult probation and parole division of the corrections department for deposit to the corrections department intensive supervision fund not exceeding one thousand eight hundred dollars (\$1,800) annually to be paid in monthly installments of not less than twenty-five dollars (\$25.00) and not more than one hundred fifty dollars (\$150), as set by the appropriate district supervisor of the adult probation and parole division, based upon the financial circumstances of the defendant. The defendant's payment of the supervised parole costs shall not be waived unless the

board holds an evidentiary hearing and finds that the defendant is unable to pay the costs. If the board waives the defendant's payment of the supervised parole costs and the defendant's financial circumstances subsequently change so that the defendant is able to pay the costs, the appropriate district supervisor of the adult probation and parole division shall advise the board and the board shall hold an evidentiary hearing to determine whether the waiver should be rescinded; and

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

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

Section 5. REPEAL.--Sections 31-14-1 through 31-14-16, Section 31-18-14.1, Section 31-20A-1, Sections 31-20A-2.1 through 31-20A-4 and Section 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13, Laws 2001, Chapter 128, Section 1, Laws 1979, Chapter 150, Section 2, Laws 1991, Chapter 30, Section 1 and

Laws 1979, Chapter 150, Sections 4, 5 and 7, as amended) are repealed.

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

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