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HOUSE BILL 31

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

William "Bill" R. Rehm and Stefani Lord

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT
FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF
LIFE IMPRISONMENT FOR THREE VIOLENT FELONY CONVICTIONS;
ELIMINATING THE POSSIBILITY OF PAROLE, EXCEPT GERIATRIC OR
MEDICAL PAROLE, FOR A DEFENDANT CONVICTED OF A THIRD VIOLENT
FELONY AND SENTENCED TO LIFE IMPRISONMENT; PROVIDING THAT
CERTAIN CONVICTIONS INCURRED BY A DEFENDANT BEFORE THE AGE OF
EIGHTEEN SHALL CONSTITUTE VIOLENT FELONIES; PROVIDING
PENALTIES.

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.--

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1 A. When a defendant is convicted of a third violent
2 felony, and each violent felony conviction is part of a
3 separate transaction or occurrence, and at least the third
4 violent felony conviction is in New Mexico, the defendant
5 shall, in addition to the sentence imposed for the third
6 violent felony conviction, be punished by a sentence of life
7 imprisonment. Except for geriatric or medical parole as
8 provided in Section 31-21-25.1 NMSA 1978, the life imprisonment
9 sentence shall not be subject to parole [~~pursuant to the~~
10 ~~provisions of Section 31-21-10 NMSA 1978~~].

11 B. The sentence of life imprisonment shall be
12 imposed after a sentencing hearing, separate from the trial or
13 guilty plea proceeding resulting in the third violent felony
14 conviction, pursuant to the provisions of Section 31-18-24 NMSA
15 1978.

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

20 (1) the defendant was sentenced as an adult
21 pursuant to the provisions of Section 31-18-15.3 or 32A-2-20
22 NMSA 1978; or

23 (2) in the case of a violent felony conviction
24 from another state, the defendant was sentenced as an adult
25 pursuant to the laws of that state.

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

6 E. As used in the Criminal Sentencing Act:

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

12 (2) "violent felony" means:

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

15 **(b) voluntary manslaughter, as provided**
16 **in Subsection A of Section 30-2-3 NMSA 1978;**

17 **(c) involuntary manslaughter, as**
18 **provided in Subsection B of Section 30-2-3 NMSA 1978;**

19 **(d) aggravated battery, as provided in**
20 **Subsection C of Section 30-3-5 NMSA 1978;**

21 **(e) shooting at a dwelling or occupied**
22 **building resulting in great bodily harm, as provided in**
23 **Subsection A of Section 30-3-8 NMSA 1978;**

24 [~~(b)~~] **(f) shooting at or from a motor**
25 **vehicle resulting in great bodily harm, as provided in**

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1 Subsection B of Section 30-3-8 NMSA 1978;

2 (g) aggravated battery against a
3 household member, as provided in Subsection C of Section
4 30-3-16 NMSA 1978;

5 ~~[(e)]~~ (h) kidnapping resulting in great
6 bodily harm inflicted upon the victim by the victim's captor,
7 as provided in Subsection B of Section 30-4-1 NMSA 1978;

8 (i) abuse of a child that results in
9 great bodily harm to the child, as provided in Subsection E of
10 Section 30-6-1 NMSA 1978;

11 (j) negligent abuse of a child that
12 results in the death of the child, as provided in Subsection F
13 of Section 30-6-1 NMSA 1978;

14 (k) intentional abuse of a child that
15 results in the death of the child, as provided in Subsection G
16 or H of Section 30-6-1 NMSA 1978;

17 ~~[(d)]~~ (l) criminal sexual penetration,
18 as provided in Subsection C, ~~[(e)]~~ D, ~~[(f)]~~ Paragraph (5) or (6)
19 ~~of Subsection~~ E or F of Section 30-9-11 NMSA 1978; ~~and~~

20 ~~[(e)]~~ (m) robbery while armed with a
21 deadly weapon ~~[resulting in great bodily harm],~~ as provided in
22 Section 30-16-2 NMSA 1978 ~~[and Subsection A of Section 30-1-12~~
23 ~~NMSA 1978];~~

24 (n) aggravated arson, as provided in
25 Section 30-17-6 NMSA 1978;

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1 (o) aggravated battery upon a peace
2 officer, as provided in Subsection C of Section 30-22-25 NMSA
3 1978;

4 (p) homicide by vehicle or great bodily
5 harm by vehicle, as provided in Section 66-8-101 NMSA 1978,
6 while: 1) under the influence of intoxicating liquor; 2) under
7 the influence of any drug; 3) driving recklessly, as provided
8 in Section 66-8-113 NMSA 1978; or 4) resisting, evading or
9 obstructing an officer, as provided in Section 30-22-1 NMSA
10 1978; and

11 (q) injury to pregnant woman by vehicle,
12 as provided in Section 66-8-101.1 NMSA 1978, while: 1) under
13 the influence of intoxicating liquor; 2) under the influence of
14 any drug; 3) driving recklessly, as provided in Section
15 66-8-113 NMSA 1978; or 4) resisting, evading or obstructing an
16 officer, as provided in Section 30-22-1 NMSA 1978."

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

19 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

20 A. Except as otherwise provided in Subsection A of
21 Section 31-18-23 NMSA 1978, an inmate of an institution who was
22 sentenced to life imprisonment becomes eligible for a parole
23 hearing after the inmate has served thirty years of the
24 sentence. Before ordering the parole of an inmate sentenced to
25 life imprisonment, the board shall:

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

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

5 (a) the circumstances of the offense;

6 (b) mitigating and aggravating
7 circumstances;

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

10 (d) whether the inmate is a habitual
11 offender;

12 (e) the reports filed under Section
13 31-21-9 NMSA 1978; and

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

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

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

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

25 B. Unless the board finds that it is in the best

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1 interest of society and the parolee to reduce the period of
2 parole, a person who was sentenced to life imprisonment shall
3 be required to undergo a minimum period of parole of five
4 years. During the period of parole, the person shall be under
5 the guidance and supervision of the board.

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

10 D. Except for certain sex offenders as provided in
11 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
12 first, second or third degree felony and who has served the
13 sentence of imprisonment imposed by the court in an institution
14 designated by the corrections department shall be required to
15 undergo a two-year period of parole. An inmate who was
16 convicted of a fourth degree felony and who has served the
17 sentence of imprisonment imposed by the court in an institution
18 designated by the corrections department 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 of the conditions of parole and the inmate's duties

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1 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. APPLICABILITY.**--The provisions of this act
12 apply to persons who have been convicted on, before or after
13 July 1, 2022 of one of the violent felonies described in
14 Section 1 of this act for the purpose of determining sentencing
15 enhancements pursuant to that section for subsequent violent
16 felony convictions on or after July 1, 2022.

17 **SECTION 4. EFFECTIVE DATE.**--The effective date of the
18 provisions of this act is July 1, 2022.