

1 SENATE BILL 64

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO JUVENILE JUSTICE REFORM; PROHIBITING THE IMPOSITION
12 OF A SENTENCE OF LIFE WITHOUT PAROLE ON A CHILD; PROVIDING
13 PAROLE PROCEDURES.
14

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

16 SECTION 1. Section 31-18-15.3 NMSA 1978 (being Laws 1993,
17 Chapter 77, Section 3) is amended to read:

18 "31-18-15.3. SERIOUS YOUTHFUL OFFENDER--DISPOSITION.--

19 A. An alleged serious youthful offender may be
20 detained in any of the following places, prior to arraignment
21 in metropolitan, magistrate or district court:

22 (1) a detention facility for delinquent
23 children, licensed by the children, youth and families
24 department;

25 (2) any other suitable place, other than a

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1 facility for the care and rehabilitation of delinquent
2 children, that meets standards for detention facilities, as set
3 forth in the Children's Code and federal law; or

4 (3) a county jail, if a facility described in
5 Paragraph (1) or (2) of this subsection is not appropriate.

6 B. When an alleged serious youthful offender is
7 detained in a juvenile detention facility prior to trial, the
8 time spent in the juvenile detention facility shall count
9 [~~towards~~] toward completion of any sentence imposed.

10 C. At arraignment, when a metropolitan or district
11 court judge or a magistrate determines that an alleged serious
12 youthful offender should remain in custody, the alleged serious
13 youthful offender may be detained in an adult or juvenile
14 detention facility, subject to the facility's accreditation and
15 the provisions of applicable federal law.

16 D. When an alleged serious youthful offender is
17 found guilty of first degree murder, the court shall sentence
18 the offender pursuant to the provisions of the Criminal
19 Sentencing Act; provided that a serious youthful offender given
20 an adult sentence shall not be sentenced to life imprisonment
21 without the possibility of release or parole. The court may
22 sentence the offender to less than, but not exceeding, the
23 mandatory term for an adult. The determination of guilt
24 becomes a conviction for purposes of the Criminal Sentencing
25 Act.

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1 E. Prior to the sentencing of an alleged serious
2 youthful offender who is convicted of first degree murder,
3 adult probation services shall prepare a presentence report and
4 submit the report to the court and the parties five days prior
5 to the sentencing hearing.

6 F. When the alleged serious youthful offender is
7 convicted of a lesser offense than first degree murder, the
8 court shall provide for disposition of the offender pursuant to
9 the provisions of Section [~~32-2-19 or 32-2-20~~] 32A-2-19 or
10 32A-2-20 NMSA 1978. When an offender is adjudicated as a
11 delinquent child, the conviction shall not be used as a
12 conviction for purposes of the Criminal Sentencing Act."

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

15 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

16 A. Except as provided in Section 31-21-10.2 NMSA
17 1978, an inmate of an institution who was sentenced to life
18 imprisonment becomes eligible for a parole hearing after the
19 inmate has served thirty years of the sentence. Before
20 ordering the parole of an inmate sentenced to life
21 imprisonment, the board shall:

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

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

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- 1 (a) the circumstances of the offense;
2 (b) mitigating and aggravating
3 circumstances;
4 (c) whether a deadly weapon was used in
5 the commission of the offense;
6 (d) whether the inmate is a habitual
7 offender;
8 (e) the reports filed under Section
9 31-21-9 NMSA 1978; and
10 (f) the reports of such physical and
11 mental examinations as have been made while in an institution;
12 (3) make a finding that a parole is in the
13 best interest of society and the inmate; and
14 (4) make a finding that the inmate is able and
15 willing to fulfill the obligations of a law-abiding citizen.

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

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

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1 the guidance and supervision of the board.

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

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

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

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

23 F. When a person on parole has performed the
24 obligations of the person's release for the period of parole
25 provided in this section, the board shall make a final order of

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1 discharge and issue the person a certificate of discharge.

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

5 (1) to pay the actual costs of parole services
6 to the adult probation and parole division of the corrections
7 department for deposit to the corrections department intensive
8 supervision fund not exceeding one thousand eight hundred
9 dollars (\$1,800) annually to be paid in monthly installments of
10 not less than twenty-five dollars (\$25.00) and not more than
11 one hundred fifty dollars (\$150), as set by the appropriate
12 district supervisor of the adult probation and parole division,
13 based upon the financial circumstances of the [~~defendant~~]
14 inmate. The [~~defendant's~~] inmate's payment of the supervised
15 parole costs shall not be waived unless the board holds an
16 evidentiary hearing and finds that the [~~defendant~~] inmate is
17 unable to pay the costs. If the board waives the [~~defendant's~~]
18 inmate's payment of the supervised parole costs and the
19 [~~defendant's~~] inmate's financial circumstances subsequently
20 change so that the [~~defendant~~] inmate is able to pay the costs,
21 the appropriate district supervisor of the adult probation and
22 parole division shall advise the board and the board shall hold
23 an evidentiary hearing to determine whether the waiver should
24 be rescinded; and

25 (2) to reimburse a law enforcement agency or

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1 local crime stopper program for the amount of any reward paid
2 by the agency or program for information leading to the
3 inmate's arrest, prosecution or conviction.

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

8 SECTION 3. A new section of the Probation and Parole Act,
9 Section 31-21-10.2 NMSA 1978, is enacted to read:

10 "31-21-10.2. [NEW MATERIAL] PAROLE FOR CHILDREN SENTENCED
11 AS ADULTS.--

12 A. Unless subject to earlier eligibility for parole
13 pursuant to another provision of law, a serious youthful
14 offender sentenced pursuant to Section 31-18-15.3 NMSA 1978 or
15 a youthful offender sentenced as an adult pursuant to Section
16 32A-2-20 NMSA 1978 shall be eligible for parole and entitled to
17 a parole hearing after the offender has served:

18 (1) twenty-five years of the sentence if the
19 sentence is for two or more convictions of first degree murder
20 pursuant to Section 30-2-1 NMSA 1978;

21 (2) twenty years of the sentence if the
22 sentence is for one conviction of either first degree willful
23 and deliberate murder pursuant to Paragraph (1) of Subsection A
24 of Section 30-2-1 NMSA 1978 or first degree depraved-mind
25 murder pursuant to Paragraph (3) of Subsection A of Section

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1 30-2-1 NMSA 1978; or

2 (3) fifteen years of the sentence if the
3 sentence is for a conviction pursuant to any other qualifying
4 provision of law.

5 Parole eligibility and a parole hearing shall occur
6 whether the offender is serving concurrent or consecutive
7 sentences for multiple crimes.

8 B. If parole is denied, the offender shall be
9 eligible for parole and entitled to a parole hearing every five
10 years thereafter, unless the offender is subject to earlier
11 eligibility for parole pursuant to any other provision of law.

12 C. During a parole eligibility hearing involving an
13 offender subject to a parole hearing pursuant to this section,
14 the board shall take into consideration, in addition to other
15 factors the board is required by law to consider:

16 (1) where available, a statement by a victim
17 or a relative of a victim of the offense for which the offender
18 is imprisoned;

19 (2) the offender's age at the time of
20 committing the offense;

21 (3) the nature of the offense and the history
22 and characteristics of the offender;

23 (4) whether the offender has substantially
24 complied with the rules of the institution to which the
25 offender has been confined, including whether the offender has

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1 completed an educational, vocational or other program, where
2 available, while confined;

3 (5) whether the offender has demonstrated
4 maturity, rehabilitation and a fitness to reenter society;

5 (6) physical, mental or psychiatric reports or
6 examinations of the offender conducted by licensed health care
7 professionals;

8 (7) the offender's family and community
9 circumstances at the time of committing the offense, including
10 the offender's history of abuse, trauma or involvement in the
11 child welfare system;

12 (8) the extent of the offender's role in the
13 offense and whether an adult or peer was involved in the
14 offense;

15 (9) the diminished culpability of juveniles as
16 compared to that of adults and the hallmark features of youth,
17 including immaturity, impetuosity and failure to appreciate
18 risks and consequences; and

19 (10) other information that the board deems
20 relevant to its decision.

21 D. An offender eligible for parole pursuant to this
22 section shall be entitled to representation by counsel at all
23 parole eligibility hearings.

24 E. An offender eligible for or granted parole
25 pursuant to this section shall be subject to those provisions

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1 of the Probation and Parole Act not in conflict with this
2 section.

3 F. The board shall annually conduct a review of all
4 offenders currently serving an adult sentence for an offense
5 committed as a child to ensure that parole eligibility hearings
6 required pursuant to this section are timely conducted."

7 SECTION 4. Section 32A-2-20 NMSA 1978 (being Laws 1993,
8 Chapter 77, Section 49, as amended) is amended to read:

9 "32A-2-20. DISPOSITION OF A YOUTHFUL OFFENDER.--

10 A. The court has the discretion to invoke either an
11 adult sentence or juvenile sanctions on a youthful offender.
12 The children's court attorney shall file a notice of intent to
13 invoke an adult sentence within ten working days of the filing
14 of the petition; provided that the court may extend the time
15 for filing of the notice of intent to invoke an adult sentence,
16 for good cause shown, prior to the adjudicatory hearing. A
17 preliminary hearing by the court or a hearing before a grand
18 jury shall be held, within ten days after the filing of the
19 intent to invoke an adult sentence, to determine whether
20 probable cause exists to support the allegations contained in
21 the petition.

22 B. If the children's court attorney has filed a
23 notice of intent to invoke an adult sentence and the child is
24 adjudicated as a youthful offender, the court shall make the
25 following findings in order to invoke an adult sentence:

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1 (1) the child is not amenable to treatment or
2 rehabilitation as a child in available facilities; and

3 (2) the child is not eligible for commitment
4 to an institution for children with developmental disabilities
5 or mental disorders.

6 C. In making the findings set forth in Subsection B
7 of this section, the judge shall consider the following
8 factors:

9 (1) the seriousness of the alleged offense;

10 (2) whether the alleged offense was committed
11 in an aggressive, violent, premeditated or willful manner;

12 (3) whether a firearm was used to commit the
13 alleged offense;

14 (4) whether the alleged offense was against
15 persons or against property, greater weight being given to
16 offenses against persons, especially if personal injury
17 resulted;

18 (5) the maturity of the child as determined by
19 consideration of the child's home, environmental situation,
20 social and emotional health, pattern of living, brain
21 development, trauma history and disability;

22 (6) the record and previous history of the
23 child;

24 (7) the prospects for adequate protection of
25 the public and the likelihood of reasonable rehabilitation of

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1 the child by the use of procedures, services and facilities
2 currently available; and

3 (8) any other relevant factor, provided that
4 factor is stated on the record.

5 D. If a child has previously been sentenced as an
6 adult pursuant to the provisions of this section, there shall
7 be a rebuttable presumption that the child is not amenable to
8 treatment or rehabilitation as a child in available facilities.

9 E. If the court invokes an adult sentence, the
10 court may sentence the child to less than, but shall not
11 exceed, the mandatory adult sentence. A youthful offender
12 given an adult sentence shall be treated as an adult offender
13 and shall be transferred to the legal custody of an agency
14 responsible for incarceration of persons sentenced to adult
15 sentences. This transfer terminates the jurisdiction of the
16 court over the child with respect to the delinquent acts
17 alleged in the petition. A child given an adult sentence shall
18 not be sentenced to life imprisonment without the possibility
19 of release or parole.

20 F. If a juvenile disposition is appropriate, the
21 court shall follow the provisions set forth in Section 32A-2-19
22 NMSA 1978. A youthful offender may be subject to extended
23 commitment in the care of the department until the age of
24 twenty-one, pursuant to the provisions of Section 32A-2-23 NMSA
25 1978.

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