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HOUSE BILL 311

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MIMI STEWART

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT CERTAIN
DEFENDANTS CONVICTED FOR TWO VIOLENT SEXUAL OFFENSES BE
SENTENCED TO LIFE IMPRISONMENT WITHOUT POSSIBILITY OF PAROLE;
AMENDING SECTIONS OF THE NMSA 1978.

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

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

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

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

1 second violent sexual offense conviction, be punished by a
2 sentence of life imprisonment. The life imprisonment sentence
3 shall be subject to parole pursuant to the provisions of Section
4 31-21-10 NMSA 1978.

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

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

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

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

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1 Sentencing Act if the crime would be considered a violent sexual
2 offense in New Mexico.

3 [E.] E. As used in the Criminal Sentencing Act,
4 "violent sexual offense" means: [~~criminal sexual penetration in~~
5 ~~the first or second degree, as provided in Subsection C or D of~~
6 ~~Section 30-9-11 NMSA 1978]~~

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

10 (2) criminal sexual penetration in the second
11 degree, as provided in Subsection D of Section 30-9-11 NMSA
12 1978; or

13 (3) criminal sexual contact of a minor in the
14 third degree, as provided in Subsection A of Section 30-9-13
15 NMSA 1978. "

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

18 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

19 A. An inmate of an institution who was sentenced to
20 life imprisonment as the result of the commission of a capital
21 felony, who was convicted of three violent felonies and
22 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
23 or who was convicted of two violent sexual offenses and
24 sentenced pursuant to [~~Sections 31-18-25 and 31-18-26 NMSA 1978]~~
25 Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26

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1 NMSA 1978 becomes eligible for a parole hearing after he has
2 served thirty years of his sentence. Before ordering the parole
3 of an inmate sentenced to life imprisonment, the board shall:

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

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

8 (a) the circumstances of the offense;

9 (b) mitigating and aggravating
10 circumstances;

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

13 (d) whether the inmate is a habitual
14 offender;

15 (e) the reports filed under Section
16 31-21-9 NMSA 1978; and

17 (f) the reports of such physical and
18 mental examinations as have been made while in prison;

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

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

23 If parole is denied, the inmate sentenced to life
24 imprisonment shall again become entitled to a parole hearing at
25 two-year intervals. The board may, on its own motion, reopen

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1 any case in which a hearing has already been granted and parole
2 denied.

3 B. Unless the board finds that it is in the best
4 interest of society and the parolee to reduce the period of
5 parole, a person who was convicted of a capital felony shall be
6 required to undergo a minimum period of parole of five years.
7 During the period of parole, the person shall be under the
8 guidance and supervision of the board.

9 C. An inmate who was convicted of a first, second or
10 third degree felony and who has served the sentence of
11 imprisonment imposed by the court in a corrections facility
12 designated by the corrections department shall be required to
13 undergo a two-year period of parole. An inmate who was
14 convicted of a fourth degree felony and who has served the
15 sentence of imprisonment imposed by the court in a corrections
16 facility designated by the corrections department shall be
17 required to undergo a one-year period of parole. During the
18 period of parole, the person shall be under the guidance and
19 supervision of the board.

20 D. Every person while on parole shall remain in the
21 legal custody of the institution from which he was released, but
22 shall be subject to the orders of the board. The board shall
23 furnish to each inmate as a prerequisite to his release under
24 its supervision a written statement of the conditions of parole
25 that shall be accepted and agreed to by the inmate as evidenced

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

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

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1 and issue him a certificate of discharge.

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

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

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

22 Section 3. EFFECTIVE DATE. -- The effective date of the
23 provisions of this act is July 1, 1997.

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State of New Mexico
House of Representatives

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4 FORTY-THIRD LEGISLATURE
5 FIRST SESSION, 1997
6
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8 February 12, 1997
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11 Mr. Speaker:
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13 Your JUDICIARY COMMITTEE, to whom has been referred
14

15 HOUSE BILL 311
16

17 has had it under consideration and reports same with
18 recommendation that it DO PASS, amended as follows:

19 1. On page 3, line 9, after the semicolon, insert the word
20 "or".
21

22 2. On page 3, line 12, strike the semicolon and the word
23 "or" and insert in lieu thereof a period and closing quotation
24 marks.
25

3. On page 3, delete lines 13 through 15.,

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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2 and thence referred to the APPROPRIATIONS AND FINANCE
3 COMMITTEE.

4
5 Respectfully submitted,

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8 _____
9 Thomas P. Foy, Chairman

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12 Adopted _____ Not Adopted _____

13 (Chief Clerk)

(Chief Clerk)

14
15 Date _____

16
17 The roll call vote was 10 For 0 Against

18 Yes: 10

19 Excused: King, Luna, Rios

20 Absent: None

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23 M \ H0311

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State of New Mexico House of Representatives

**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

February 27, 1997

Mr. Speaker:

**Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred**

HOUSE BILL 311, as amended

**has had it under consideration and reports same with
recommendation that it DO PASS.**

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 16 For 0 Against

Yes: 16

Excused: Watchman

Absent: None

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 16, 1997

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 311, as amended

has had it under consideration and reports same with
recommendation that it DO PASS.

Respectfully submitted,

Fernando R. Macias, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

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**FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997**

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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Payne, Sanchez, Tsosie

Absent: None

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