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HOUSE BILL 812

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

INTRODUCED BY

R. DAVID PEDERSON

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING FOR THE  
IMPOSITION OF A SENTENCE OF LIFE IMPRISONMENT WITHOUT  
POSSIBILITY OF RELEASE OR PAROLE; AMENDING SECTIONS OF THE NMSA  
1978.

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

Section 1. Section 31-20A-1 NMSA 1978 (being Laws 1979,  
Chapter 150, Section 2) is amended to read:

"31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

A. At the conclusion of all capital felony cases  
heard by jury, and after proper charge from the court and  
argument of counsel, the jury shall retire to consider a verdict  
of guilty or not guilty without any consideration of punishment.  
In nonjury capital felony cases, the judge shall first consider  
a finding of guilty or not guilty without any consideration of

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1 punishment.

2 B. Upon a verdict by the jury or judge that the  
3 defendant is guilty of a capital felony, or upon a plea of  
4 guilty to a capital felony, the court shall conduct a separate  
5 sentencing proceeding to determine whether the defendant should  
6 be sentenced to death, life imprisonment without possibility of  
7 release or parole or life imprisonment [~~as authorized herein~~].  
8 In a jury trial, the sentencing proceeding shall be conducted as  
9 soon as practicable by the original trial judge before the  
10 original trial jury. In a nonjury trial, the sentencing  
11 proceeding shall be conducted as soon as practicable by the  
12 original trial judge. In the case of a plea of guilty to a  
13 capital felony, the sentencing proceeding shall be conducted as  
14 soon as practicable by the original trial judge or by a jury  
15 upon demand of a party.

16 C. In the sentencing proceeding, all evidence  
17 admitted at the trial shall be considered, and additional  
18 evidence may be presented as to the circumstances of the crime  
19 and as to any aggravating or mitigating circumstances pursuant  
20 to Sections [~~6 and 7 of this act~~] 31-20A-5 and 31-20A-6 NMSA  
21 1978.

22 D. In a jury sentencing proceeding, the judge shall  
23 give appropriate instructions and allow argument, and the jury  
24 shall retire to determine the punishment to be imposed. In a  
25 nonjury sentencing proceeding, or upon a plea of guilty, where

1 no jury has been demanded, the judge shall allow argument and  
2 determine the punishment to be imposed."

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

5 "31-20A-2. DETERMINATION OF SENTENCE. --

6 A. Capital sentencing deliberations shall be guided  
7 by the following considerations:

8 (1) whether aggravating circumstances exist as  
9 enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978;

10 (2) whether mitigating circumstances exist as  
11 enumerated in Section [~~7 of this act~~] 31-20A-6 NMSA 1978; and

12 (3) whether other mitigating circumstances  
13 exist.

14 B. After weighing the aggravating circumstances and  
15 the mitigating circumstances, weighing them against each other  
16 and considering both the defendant and the crime, the jury or  
17 judge shall determine whether the defendant should be sentenced  
18 to death, life imprisonment without possibility of release or  
19 parole or life imprisonment."

20 Section 3. Section 31-20A-3 NMSA 1978 (being Laws 1979,  
21 Chapter 150, Section 4) is amended to read:

22 "31-20A-3. COURT SENTENCING. --

23 A. In a jury sentencing proceeding in which the jury  
24 unanimously finds beyond a reasonable doubt and specifies at  
25 least [~~one~~] two of the aggravating circumstances enumerated in

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1 Section [~~6 of this act~~] 31-20A-5 NMSA 1978, and unanimously  
2 specifies the sentence of death pursuant to Section ~~3 of this~~  
3 ~~act~~] 31-20A-2 NMSA 1978, the court shall sentence the defendant  
4 to death.

5 B. In a jury sentencing proceeding in which the jury  
6 unanimously finds beyond a reasonable doubt and specifies one of  
7 the aggravating circumstances enumerated in Section 31-20A-5  
8 NMSA 1978, and unanimously specifies the sentence of life  
9 imprisonment without possibility of release or parole pursuant  
10 to Section 31-20A-2 NMSA 1978, the court shall sentence the  
11 defendant to life imprisonment without possibility of release or  
12 parole.

13 C. Where a sentence of death is not unanimously  
14 specified, or the jury does not make the required finding, or  
15 the jury is unable to reach a unanimous verdict, the court shall  
16 sentence the defendant to life imprisonment.

17 D. In a nonjury sentencing proceeding and in cases  
18 involving a plea of guilty, where no jury has been demanded, the  
19 judge shall determine and impose the sentence, but he shall not  
20 impose the sentence of death except upon a finding beyond a  
21 reasonable doubt and specification of at least ~~one~~ two of the  
22 aggravating circumstances enumerated in Section [~~6 of this act~~]  
23 31-20A-5 NMSA 1978.

24 E. In a nonjury sentencing proceeding and in cases  
25 involving a plea of guilty, where no jury has been demanded, the

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1 judge shall determine and impose the sentence, but he shall not  
2 impose the sentence of life imprisonment without possibility of  
3 release or parole except upon a finding beyond a reasonable  
4 doubt and specification of one of the aggravating circumstances  
5 enumerated in Section 31-20A-5 NMSA 1978."

6 Section 4. Section 31-20A-4 NMSA 1978 (being Laws 1979,  
7 Chapter 150, Section 5) is amended to read:

8 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

9 A. The judgment of conviction and sentence of death  
10 shall be automatically reviewed by the supreme court of the  
11 state of New Mexico.

12 B. In addition to the other matters on appeal, the  
13 supreme court shall rule on the validity of the death sentence.

14 C. The death penalty shall not be imposed if:

15 (1) the evidence does not support the finding  
16 of [a] at least two of the statutory aggravating [~~circumstance~~]  
17 circumstances;

18 (2) the evidence supports a finding that the  
19 mitigating circumstances outweigh the aggravating circumstances;

20 (3) the sentence of death was imposed under the  
21 influence of passion, prejudice or any other arbitrary factor;  
22 or

23 (4) the sentence of death is excessive or  
24 disproportionate to the penalty imposed in similar cases,  
25 considering both the crime and the defendant.

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1                   D. The sentence of life imprisonment without  
2 possibility of release or parole shall not be imposed if:

3                   (1) the evidence does not support the finding  
4 of one statutory aggravating circumstance;

5                   (2) the evidence supports a finding that the  
6 mitigating circumstances outweigh the aggravating circumstances;

7                   (3) the sentence of life imprisonment without  
8 possibility of release or parole was imposed under the influence  
9 of passion, prejudice or any other arbitrary factor; or

10                   (4) the sentence of life imprisonment without  
11 possibility of release or parole is excessive or  
12 disproportionate to the penalty imposed in similar cases,  
13 considering both the crime and the defendant.

14                   ~~[D-]~~ E. No error in the sentencing proceeding shall  
15 result in the reversal of the conviction of a capital felony.  
16 If the trial court is reversed on appeal because of error only  
17 in the sentencing proceeding, the supreme court shall remand  
18 solely for a new sentencing proceeding. The new sentencing  
19 proceeding ordered and mandated shall apply only to the issue of  
20 punishment.

21                   ~~[E-]~~ F. In cases of remand for a new sentencing  
22 proceeding, all exhibits and a transcript of all testimony and  
23 other evidence admitted in the prior trial and sentencing  
24 proceeding shall be admissible in the new sentencing proceeding,  
25 and:

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1 (1) if the sentencing proceeding was before a  
2 jury, a new jury shall be impaneled for the new sentencing  
3 proceeding;

4 (2) if the sentencing proceeding was before a  
5 judge, the original trial judge shall conduct the new sentencing  
6 proceeding; or

7 (3) if the sentencing proceeding was before a  
8 judge and the original trial judge is unable or unavailable to  
9 conduct a new sentencing proceeding, then another judge shall be  
10 designated to conduct the new sentencing proceeding, and the  
11 parties are entitled to disqualify the new judge on the grounds  
12 set forth in Section 38-3-9 NMSA 1978 before the newly  
13 designated judge exercises any discretion. "

14 Section 5. Section 31-20A-5 NMSA 1978 (being Laws 1979,  
15 Chapter 150, Section 6, as amended) is amended to read:

16 "31-20A-5. AGGRAVATING CIRCUMSTANCES. --The aggravating  
17 circumstances to be considered by the sentencing court or jury  
18 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are  
19 limited to the following:

20 A. the victim was a peace officer who was acting in  
21 the lawful discharge of an official duty when he was murdered;

22 B. the murder was committed with intent to kill in  
23 the commission of or attempt to commit [~~kidnaping~~] kidnapping,  
24 criminal sexual contact of a minor or criminal sexual  
25 penetration;

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1 C. the murder was committed with the intent to kill  
2 by the defendant while attempting to escape from a penal  
3 institution of New Mexico;

4 D. while incarcerated in a penal institution in New  
5 Mexico, the defendant, with the intent to kill, murdered a  
6 person who was at the time incarcerated in or lawfully on the  
7 premises of a penal institution in New Mexico. As used in this  
8 subsection, "penal institution" includes facilities under the  
9 jurisdiction of the corrections [~~and criminal rehabilitation~~]  
10 department and county and municipal jails;

11 E. while incarcerated in a penal institution in New  
12 Mexico, the defendant, with the intent to kill, murdered an  
13 employee of the corrections [~~and criminal rehabilitation~~]  
14 department;

15 F. the capital felony was committed for hire; [~~and~~]

16 G. the capital felony was murder of a witness to a  
17 crime or any person likely to become a witness to a crime, for  
18 the purpose of preventing report of the crime or testimony in  
19 any criminal proceeding or for retaliation for the victim having  
20 testified in any criminal proceeding;

21 H. the victim was a child less than thirteen years  
22 of age;

23 I. the defendant committed two or more murders  
24 during the same transaction or occurrence; and

25 J. the defendant committed multiple murders within a

1 twenty-four hour period of time."

2 Section 6. EFFECTIVE DATE. --The effective date of the  
3 provisions of this act is July 1, 1997.

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**State of New Mexico**  
**House of Representatives**

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3 FORTY-THIRD LEGISLATURE  
4  
5 FIRST SESSION, 1997  
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8 March 10, 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 812  
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17 has had it under consideration and reports same with  
18 recommendation that it DO PASS, amended as follows:

19 1. Page 8, line 21, before "the" insert "the murder was  
20 committed with intent to kill and the defendant knew or should  
21 have known that".

22 2. Page 8, line 24, strike "; and" and insert in lieu  
23 thereof a period and a closing quotation mark.  
24

25 3. On page 8, line 25, strike the entire line.

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FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

HJC/HB 812

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4. On page 9, line 1, strike the entire line.,

and thence referred to the APPROPRIATIONS AND FINANCE  
COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Thomas P. Foy, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: King, Rios

Absent: None

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# State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE  
FIRST SESSION, 1997

March 12, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to  
whom has been referred

HOUSE BILL 812, as amended

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

Respectfully submitted,

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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 12 For 0 Against

Yes: 12

Excused: Buffett, Garcia, M H. , Marquardt, Picraux, Salazar

Absent: None

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