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SENATE BILL 571

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

. INTRODUCED BY Manny M Aragon

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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.-- [A-]
When a defendant has been convicted of a capital felony, he shall be punished by life imprisonment [or death. The punishment shall be imposed after a sentencing hearing separate from the trial or guilty plea proceeding. However, if the defendant has not reached the age of majority at the time of the commission of the capital felony for which he was

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1 convicted, he may be sentenced to life imprisonment but shall
2 not be punished by death.

3 B. ~~In the event the death penalty in a capital~~
4 ~~felony case is held to be unconstitutional or otherwise~~
5 ~~invalidated by the supreme court of the state of New Mexico or~~
6 ~~the supreme court of the United States, the person previously~~
7 ~~sentenced to death for a capital felony shall be sentenced to~~
8 ~~life imprisonment] or life imprisonment without possibility of~~
9 ~~release or parole.~~ "

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

12 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

20 B. Upon a verdict by the jury or judge that the
21 defendant is guilty of a capital felony, or upon a plea of
22 guilty to a capital felony, the court shall conduct a separate
23 sentencing proceeding to determine whether the defendant
24 should be sentenced to [death or] life imprisonment or life
25 imprisonment without possibility of release or parole as

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1 authorized herein. In a jury trial, the sentencing proceeding
2 shall be conducted as soon as practicable by the original
3 trial judge before the original trial jury. In a nonjury
4 trial, the sentencing proceeding shall be conducted as soon as
5 practicable by the original trial judge. In the case of a
6 plea of guilty to a capital felony, the sentencing proceeding
7 shall be conducted as soon as practicable by the original
8 trial judge or by a jury upon demand of a party.

9 C. In the sentencing proceeding, all evidence
10 admitted at the trial shall be considered, and additional
11 evidence may be presented as to the circumstances of the crime
12 and as to any aggravating [~~or mitigating circumstances~~
13 ~~pursuant to Sections 6 and 7 of this act~~] circumstances
14 pursuant to the provisions of Section 31-20A-5 NMSA 1978.

15 D. In a jury sentencing proceeding, the judge
16 shall give appropriate instructions and allow argument, and
17 the jury shall retire to determine the punishment to be
18 imposed. In a nonjury sentencing proceeding, or upon a plea
19 of guilty, where no jury has been demanded, the judge shall
20 allow argument and determine the punishment to be imposed."

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

23 "31-20A-2. DETERMINATION OF SENTENCE. --

24 A. Capital sentencing deliberations shall be
25 guided by [~~the following considerations~~]

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1 (1)] whether aggravating circumstances exist
2 as enumerated in Section [~~6 of this act;~~

3 (2) ~~whether mitigating circumstances exist as~~
4 ~~enumerated in Section 7 of this act; and~~

5 (3) ~~whether other mitigating circumstances~~
6 ~~exist]~~ 31-20A-5 NMSA 1978.

7 B. After weighing the aggravating circumstances
8 and [~~the mitigating circumstances, weighing them against each~~
9 ~~other, and]~~ considering both the defendant and the crime, the
10 jury or judge shall determine whether the defendant should be
11 sentenced to [~~death or~~] life imprisonment or life imprisonment
12 without possibility of release or parole. "

13 Section 4. Section 31-20A-2.1 NMSA 1978 (being Laws
14 1991, Chapter 30, Section 1) is amended to read:

15 "31-20A-2.1. [~~PROHIBITION AGAINST~~] CAPITAL PUNISHMENT OF
16 ~~MENTALLY RETARDED PERSONS--PRESENTENCING HEARING.~~ --

17 A. As used in this section, "mentally retarded"
18 means significantly subaverage general intellectual
19 functioning existing concurrently with deficits in adaptive
20 behavior. An intelligence quotient of seventy or below on a
21 reliably administered intelligence quotient test shall be
22 presumptive evidence of mental retardation.

23 B. The penalty of [~~death~~] life imprisonment
24 without possibility of release or parole shall not be imposed
25 on any person who is mentally retarded.

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1 C. Upon motion of the defense requesting a ruling
2 that the penalty of [~~death~~] life imprisonment without
3 possibility of release or parole be precluded under this
4 section, the court shall hold a hearing, prior to conducting
5 the sentencing proceeding under Section 31-20A-3 NMSA 1978.
6 If the court finds, by a preponderance of the evidence, that
7 the defendant is mentally retarded, it shall sentence the
8 defendant to life imprisonment. A ruling by the court that
9 evidence of diminished intelligence introduced by the
10 defendant does not preclude the [~~death~~] penalty of life
11 imprisonment without possibility of release or parole under
12 this section shall not restrict the defendant's opportunity to
13 introduce such evidence at the sentencing proceeding or to
14 argue that that evidence should be given mitigating
15 significance. If the sentencing proceeding is conducted
16 before a jury, the jury shall not be informed of any ruling
17 denying a defendant's motion under this section. "

18 Section 5. Section 31-20A-3 NMSA 1978 (being Laws 1979,
19 Chapter 150, Section 4) is amended to read:

20 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
21 proceeding in which the jury unanimously finds beyond a
22 reasonable doubt and specifies at least one of the aggravating
23 circumstances enumerated in Section [~~6 of this act and~~
24 ~~unanimously specifies the sentence of death pursuant to~~
25 ~~Section 3 of this act~~] 31-20A-5 NMSA 1978, the court shall

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1 sentence the defendant to [~~death~~] life imprisonment without
2 possibility of release or parole. Where a sentence of [~~death~~]
3 life imprisonment without possibility of release or parole is
4 not unanimously specified, or the jury does not make the
5 required finding, or the jury is unable to reach a unanimous
6 verdict, the court shall sentence the defendant to life
7 imprisonment. In a nonjury sentencing proceeding and in cases
8 involving a plea of guilty, where no jury has been demanded,
9 the judge shall determine and impose the sentence, but he
10 shall not impose the sentence of [~~death~~] life imprisonment
11 without possibility of release or parole except upon a finding
12 beyond a reasonable doubt and specification of at least one of
13 the aggravating circumstances enumerated in Section [~~6 of this~~
14 ~~act~~] 31-20A-5 NMSA 1978. "

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

17 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

18 A. The judgment of conviction and sentence of
19 [~~death~~] life imprisonment without possibility of release or
20 parole shall be automatically reviewed by the supreme court of
21 the state of New Mexico.

22 B. In addition to the other matters on appeal, the
23 supreme court shall rule on the validity of the [~~death~~]
24 sentence of life imprisonment without possibility of release
25 or parole.

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1 C. The [~~death~~] penalty of life imprisonment
2 without possibility of release or parole shall not be imposed
3 if:

4 (1) the evidence does not support the finding
5 of a statutory aggravating circumstance;

6 [~~(2) the evidence supports a finding that the~~
7 ~~mitigating circumstances outweigh the aggravating~~
8 ~~circumstances;~~

9 ~~(3)]~~ (2) the sentence of [~~death~~] life
10 imprisonment without possibility of release or parole was
11 imposed under the influence of passion, prejudice or any other
12 arbitrary factor; or

13 [~~(4)]~~ (3) the sentence of [~~death~~] life
14 imprisonment without possibility of release or parole is
15 excessive or disproportionate to the penalty imposed in
16 similar cases, considering both the crime and the defendant.

17 D. No error in the sentencing proceeding shall
18 result in the reversal of the conviction of a capital felony.
19 If the trial court is reversed on appeal because of error only
20 in the sentencing proceeding, the supreme court shall remand
21 solely for a new sentencing proceeding. The new sentencing
22 proceeding ordered and mandated shall apply only to the issue
23 of punishment.

24 E. In cases of remand for a new sentencing
25 proceeding, all exhibits and a transcript of all testimony and

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1 other evidence admitted in the prior trial and sentencing
2 proceeding shall be admissible in the new sentencing
3 proceeding, and:

4 (1) if the sentencing proceeding was before a
5 jury, a new jury shall be impaneled for the new sentencing
6 proceeding;

7 (2) if the sentencing proceeding was before a
8 judge, the original trial judge shall conduct the new
9 sentencing proceeding; or

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

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

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

23 A. the ~~[victim was]~~ defendant, with the deliberate
24 intent to kill, murdered a peace officer who was acting in the
25 lawful discharge of an official duty when he was murdered;

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1 B. the murder was committed with the deliberate
2 intent to kill in the commission of or attempt to commit
3 [~~kidnaping~~] kidnapping, criminal sexual contact of a minor or
4 criminal sexual penetration;

5 C. the murder was committed with the deliberate
6 intent to kill by the defendant while attempting to escape
7 from a penal institution of New Mexico;

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

16 E. while incarcerated in a penal institution in
17 New Mexico, the defendant, with the deliberate intent to kill,
18 murdered an employee of the corrections [~~and criminal~~
19 ~~rehabilitation~~] department;

20 F. the capital felony, with the deliberate intent
21 to kill, was committed for hire; and

22 G. the capital felony, with the deliberate intent
23 to kill, was murder of a witness to a crime or any person
24 likely to become a witness to a crime, for the purpose of
25 preventing report of the crime or testimony in any criminal

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1 proceeding or for retaliation for the victim having testified
2 in any criminal proceeding. "

3 Section 8. Section 31-21-10 NMSA 1978 (being Laws 1980,
4 Chapter 28, Section 1, as amended) is amended to read:

5 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

6 A. An inmate of an institution who was sentenced
7 to life imprisonment as the result of the commission of a
8 capital felony, who was convicted of three violent felonies
9 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
10 1978 or who was convicted of two violent sexual offenses and
11 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
12 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
13 parole hearing after he has served thirty years of his
14 sentence. Before ordering the parole of an inmate sentenced
15 to life imprisonment, the board shall:

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

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

20 (a) the circumstances of the offense;

21 (b) mitigating and aggravating
22 circumstances;

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

25 (d) whether the inmate is a habitual

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1 offender;

2 (e) the reports filed under Section
3 31-21-9 NMSA 1978; and

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

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

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

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

16 B. An inmate of an institution who was sentenced
17 to life imprisonment without possibility of release or parole
18 as the result of the commission of a capital felony is not
19 eligible for parole and shall remain incarcerated for the
20 entirety of his natural life.

21 [~~B.~~] C. Unless the board finds that it is in the
22 best interest of society and the parolee to reduce the period
23 of parole, a person who was convicted of a capital felony
24 shall be required to undergo a minimum period of parole of
25 five years. During the period of parole, the person shall be

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1 under the guidance and supervision of the board.

2 ~~[C.]~~ D. An inmate who was convicted of a first,
3 second or third degree felony and who has served the sentence
4 of imprisonment imposed by the court in a corrections facility
5 designated by the corrections department shall be required to
6 undergo a two-year period of parole. An inmate who was
7 convicted of a fourth degree felony and who has served the
8 sentence of imprisonment imposed by the court in a corrections
9 facility designated by the corrections department shall be
10 required to undergo a one-year period of parole. During the
11 period of parole, the person shall be under the guidance and
12 supervision of the board.

13 ~~[D.]~~ E. Every person while on parole shall remain
14 in the legal custody of the institution from which he was
15 released, but shall be subject to the orders of the board.
16 The board shall furnish to each inmate as a prerequisite to
17 his release under its supervision a written statement of the
18 conditions of parole that shall be accepted and agreed to by
19 the inmate as evidenced by his signature affixed to a
20 duplicate copy to be retained in the files of the board. The
21 board shall also require as a prerequisite to release the
22 submission and approval of a parole plan. If an inmate
23 refuses to affix his signature to the written statement of the
24 conditions of his parole or does not have an approved parole
25 plan, he shall not be released and shall remain in the custody

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1 of the corrections facility in which he has served his
2 sentence, excepting parole, until such time as the period of
3 parole he was required to serve, less meritorious deductions,
4 if any, expires, at which time he shall be released from that
5 facility without parole, or until such time that he evidences
6 his acceptance and agreement to the conditions of parole as
7 required or receives approval for his parole plan or both.
8 Time served from the date that an inmate refuses to accept and
9 agree to the conditions of parole or fails to receive approval
10 for his parole plan shall reduce the period, if any, to be
11 served under parole at a later date. If the district court
12 has ordered that the inmate make restitution to a victim as
13 provided in Section 31-17-1 NMSA 1978, the board shall include
14 restitution as a condition of parole. The board shall also
15 personally apprise the inmate of the conditions of parole and
16 his duties relating thereto.

17 [E.] F. When a person on parole has performed the
18 obligations of his release for the period of parole provided
19 in this section, the board shall make a final order of
20 discharge and issue him a certificate of discharge.

21 [F.] G. Pursuant to the provisions of Section
22 31-18-15 NMSA 1978, the board shall require the inmate as a
23 condition of parole:

24 (1) to pay the actual costs of his parole
25 services to the adult probation and parole division of the

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

8 (2) to reimburse a law enforcement agency or
9 local crime stopper program for the amount of any reward paid
10 by the agency or program for information leading to his
11 arrest, prosecution or conviction.

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

16 Section 9. REPEAL. -- Sections 31-14-1 through 31-14-16
17 and 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections
18 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979,
19 Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and
20 4, Laws 1929, Chapter 69, Sections 12 and 13 and Laws 1979,
21 Chapter 150, Section 7, as amended) are repealed.

22 Section 10. APPLICABILITY. -- The provisions of this act
23 apply only to persons convicted of a capital felony offense
24 committed on or after July 1, 1999. As to persons convicted
25 of a capital felony offense committed prior to July 1, 1999,

1 the laws with respect to capital felony offenses in effect at
2 the time the offense was committed shall apply.

3 Section 11. EFFECTIVE DATE. --The effective date of the
4 provisions of this act is July 1, 1999.

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9 March 6, 1999
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11 Mr. Presi dent:

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13 Your JUDI CI ARY COMMI TTEE, to whom has been referred
14

15 SENATE BILL 571
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17 has had it under consideration and reports same with
18 recommendation that it DO PASS.
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21 Respectfully submi tted,
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Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: Davis, Stockard

Excused: Payne

Absent: None

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