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HOUSE BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF MANDATORY LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR THREE VIOLENT FELONY CONVICTIONS; PROVIDING EXCEPTIONS THAT ALLOW FOR PAROLE IN CERTAIN CIRCUMSTANCES; 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.--

A. When a defendant is convicted of a third violent

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

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

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

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

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

25 D. When a defendant has a felony conviction from

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

5 E. As used in the Criminal Sentencing Act:

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

11 (2) "violent felony" means:

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

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

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

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

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

23 [~~b~~] (f) shooting at or from a motor  
24 vehicle resulting in great bodily harm, as provided in  
25 Subsection B of Section 30-3-8 NMSA 1978;

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

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

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

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

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

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

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

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

25                   (o) aggravated battery upon a peace

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1 officer, as provided in Subsection C of Section 30-22-25 NMSA  
2 1978;

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

10 (q) injury to pregnant woman by vehicle,  
11 as provided in Section 66-8-101.1 NMSA 1978, while: 1) under  
12 the influence of intoxicating liquor; 2) under the influence of  
13 any drug; 3) driving recklessly, as provided in Section  
14 66-8-113 NMSA 1978; or 4) resisting, evading or obstructing an  
15 officer, as provided in Section 30-22-1 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 becomes eligible for a parole hearing after  
21 the inmate has served thirty years of the sentence. Before  
22 ordering the parole of an inmate sentenced to life  
23 imprisonment, the board shall:

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

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

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

23 B. Unless the board finds that it is in the best  
24 interest of society and the parolee to reduce the period of  
25 parole, a person who was sentenced to life imprisonment shall

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1 be required to undergo a minimum period of parole of five  
2 years. During the period of parole, the person shall be under  
3 the guidance and supervision of the board.

4 C. Except as provided in Subsection D of this  
5 section, an inmate of an institution who was sentenced to life  
6 imprisonment without possibility of release or parole is not  
7 eligible for parole and shall remain incarcerated for the  
8 entirety of the inmate's natural life.

9 D. An inmate of an institution who was sentenced to  
10 life imprisonment pursuant to Section 31-18-23 NMSA 1978  
11 becomes eligible for a parole hearing if the inmate:

12 (1) has served ten or more years of a sentence  
13 imposed pursuant to Section 31-18-23 NMSA 1978; and

14 (2) the inmate is sixty years of age or older.

15 A person granted parole pursuant to this subsection shall  
16 be required to undergo parole, and shall be under the guidance  
17 and supervision of the board, for the entirety of the person's  
18 natural life.

19 ~~[D-]~~ E. Except for certain sex offenders as  
20 provided in Section 31-21-10.1 NMSA 1978 and persons granted  
21 parole pursuant to Subsection D of this section, an inmate who  
22 was convicted of a first, second or third degree felony and who  
23 has served the sentence of imprisonment imposed by the court in  
24 an institution designated by the corrections department shall  
25 be required to undergo a two-year period of parole. An inmate

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1 who was convicted of a fourth degree felony and who has served  
2 the sentence of imprisonment imposed by the court in an  
3 institution designated by the corrections department shall be  
4 required to undergo a one-year period of parole. During the  
5 period of parole, the person shall be under the guidance and  
6 supervision of the board.

7 ~~[E.]~~ F. Every person while on parole shall remain  
8 in the legal custody of the institution from which the person  
9 was released, but shall be subject to the orders of the board.  
10 The board shall furnish to each inmate as a prerequisite to  
11 release under its supervision a written statement of the  
12 conditions of parole that shall be accepted and agreed to by  
13 the inmate as evidenced by the inmate's signature affixed to a  
14 duplicate copy to be retained in the files of the board. The  
15 board shall also require as a prerequisite to release the  
16 submission and approval of a parole plan. If an inmate refuses  
17 to affix the inmate's signature to the written statement of the  
18 conditions of parole or does not have an approved parole plan,  
19 the inmate shall not be released and shall remain in the  
20 custody of the institution in which the inmate has served the  
21 inmate's sentence, excepting parole, until such time as the  
22 period of parole the inmate was required to serve, less  
23 meritorious deductions, if any, expires, at which time the  
24 inmate shall be released from that institution without parole,  
25 or until such time that the inmate evidences acceptance and

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1 agreement to the conditions of parole as required or receives  
2 approval for the inmate's parole plan or both. Time served  
3 from the date that an inmate refuses to accept and agree to the  
4 conditions of parole or fails to receive approval for the  
5 inmate's parole plan shall reduce the period, if any, to be  
6 served under parole at a later date. If the district court has  
7 ordered that the inmate make restitution to a victim as  
8 provided in Section 31-17-1 NMSA 1978, the board shall include  
9 restitution as a condition of parole. The board shall also  
10 personally apprise the inmate of the conditions of parole and  
11 the inmate's duties relating thereto.

12 [~~F-~~] G. When a person on parole has performed the  
13 obligations of the person's release for the period of parole  
14 provided in this section, the board shall make a final order of  
15 discharge and issue the person a certificate of discharge.

16 [~~G-~~] H. Pursuant to the provisions of Section  
17 31-18-15 NMSA 1978, the board shall require the inmate as a  
18 condition of parole:

19 (1) to pay the actual costs of parole services  
20 to the adult probation and parole division of the corrections  
21 department for deposit to the corrections department intensive  
22 supervision fund not exceeding one thousand eight hundred  
23 dollars (\$1,800) annually to be paid in monthly installments of  
24 not less than twenty-five dollars (\$25.00) and not more than  
25 one hundred fifty dollars (\$150), as set by the appropriate

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1 district supervisor of the adult probation and parole division,  
2 based upon the financial circumstances of the defendant. The  
3 defendant's payment of the supervised parole costs shall not be  
4 waived unless the board holds an evidentiary hearing and finds  
5 that the defendant is unable to pay the costs. If the board  
6 waives the defendant's payment of the supervised parole costs  
7 and the defendant's financial circumstances subsequently change  
8 so that the defendant is able to pay the costs, the appropriate  
9 district supervisor of the adult probation and parole division  
10 shall advise the board and the board shall hold an evidentiary  
11 hearing to determine whether the waiver should be rescinded;  
12 and

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

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

21 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
22 provisions of this act is July 1, 2016.