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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; ENACTING NEW SECTIONS OF
THE CRIMINAL SENTENCING ACT TO PROVIDE FOR MANDATORY LIFE
IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR TWO VIOLENT
FELONY CONVICTIONS RESULTING IN THE DEATH OF A HUMAN BEING AND
TO PROVIDE A SENTENCING PROCEDURE; 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

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1 LIFE IMPRISONMENT--EXCEPTION.--

2 A. When a defendant is convicted of a third violent
3 felony, and each violent felony conviction is part of a
4 separate transaction or occurrence, and at least the third
5 violent felony conviction is in New Mexico, the defendant
6 shall, in addition to the sentence imposed for the third
7 violent felony conviction, be punished by a sentence of life
8 imprisonment [~~The life imprisonment sentence shall be subject~~
9 ~~to parole pursuant to the provisions of Section 31-21-10 NMSA~~
10 ~~1978~~] without the possibility of parole.

11 B. The sentence of life imprisonment without the
12 possibility of parole shall be imposed after a sentencing
13 hearing, separate from the trial or guilty plea proceeding
14 resulting in the third violent felony conviction, pursuant to
15 the provisions of Section 31-18-24 NMSA 1978.

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

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

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

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

6 E. As used in the Criminal Sentencing Act:

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

12 (2) "violent felony" means:

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

15 (b) aggravated battery, as provided in
16 Subsection C of Section 30-3-5 NMSA 1978;

17 (c) shooting at a dwelling or occupied
18 building resulting in great bodily harm, as provided in Section
19 30-3-8 NMSA 1978;

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

23 (e) aggravated battery against a
24 household member, as provided in Subsection C of Section
25 30-3-16 NMSA 1978;

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

4 (g) intentional abuse of a child that
5 results in the death of the child, as provided in Subsection G
6 or H of Section 30-6-1 NMSA 1978;

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

10 ~~(e)]~~ (i) robbery while armed with a
11 deadly weapon resulting in great bodily harm, as provided in
12 Section 30-16-2 NMSA 1978 ~~[and Subsection A of Section 30-1-12~~
13 ~~NMSA 1978];~~

14 (j) aggravated arson, as provided in
15 Section 30-17-6 NMSA 1978;

16 (k) aggravated battery upon a peace
17 officer, as provided in Subsection C of Section 30-22-25 NMSA
18 1978;

19 (l) homicide by vehicle or great bodily
20 harm by vehicle while: 1) under the influence of intoxicating
21 liquor; 2) under the influence of any drug; 3) driving
22 recklessly, as provided in Section 66-8-113 NMSA 1978; or 4)
23 resisting, evading or obstructing an officer; and

24 (m) injury to pregnant woman by vehicle
25 while: 1) under the influence of intoxicating liquor; 2) under

1 the influence of any drug; 3) driving recklessly, as provided
2 in Section 66-8-113 NMSA 1978; or 4) resisting, evading or
3 obstructing an officer."

4 SECTION 2. A new section of the Criminal Sentencing Act
5 is enacted to read:

6 "[NEW MATERIAL] TWO VIOLENT FELONIES RESULTING IN THE
7 DEATH OF A HUMAN BEING--MANDATORY LIFE IMPRISONMENT--
8 EXCEPTION.--

9 A. When a defendant is convicted of a second
10 violent felony resulting in the death of a human being, and
11 each conviction of a violent felony resulting in the death of a
12 human being is part of a separate transaction or occurrence,
13 and at least the second conviction of a violent felony
14 resulting in the death of a human being is in New Mexico, the
15 defendant shall, in addition to the punishment imposed for the
16 second conviction of a violent felony resulting in the death of
17 a human being, be punished by a sentence of life imprisonment
18 without the possibility of parole.

19 B. The sentence of life imprisonment without the
20 possibility of parole shall be imposed after a sentencing
21 hearing, separate from the trial or guilty plea proceeding
22 resulting in the second conviction of a violent felony
23 resulting in the death of a human being, pursuant to the
24 provisions of Section 3 of this 2016 act.

25 C. For the purposes of this section, a conviction

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1 of a violent felony resulting in the death of a human being
2 incurred by a defendant before the defendant reaches the age of
3 eighteen shall not count as a conviction of a violent felony
4 resulting in the death of a human being, unless:

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

8 (2) in the case of a conviction from another
9 state, the defendant was sentenced as an adult pursuant to the
10 laws of that state.

11 D. When a defendant has a felony conviction from
12 another state, the felony conviction shall be considered a
13 violent felony resulting in the death of a human being for the
14 purposes of the Criminal Sentencing Act if the crime would be
15 considered a violent felony resulting in the death of a human
16 being in New Mexico.

17 E. As used in the Criminal Sentencing Act, "violent
18 felony resulting in the death of a human being" means:

19 (1) murder in the first or second degree, as
20 provided in Section 30-2-1 NMSA 1978; and

21 (2) intentional abuse of a child that results
22 in the death of the child, as provided in Subsection G or H of
23 Section 30-6-1 NMSA 1978."

24 SECTION 3. A new section of the Criminal Sentencing Act
25 is enacted to read:

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1 "[NEW MATERIAL] TWO VIOLENT FELONIES RESULTING IN THE
2 DEATH OF A HUMAN BEING--SENTENCING PROCEDURE.--

3 A. The court shall conduct a separate sentencing
4 proceeding to determine any controverted question of fact
5 regarding whether the defendant has been convicted of two
6 violent felonies resulting in the death of a human being.
7 Either party to the action may demand a jury trial.

8 B. In a jury trial, the sentencing proceeding shall
9 be conducted as soon as practicable by the original trial judge
10 before the original trial jury. In a nonjury trial, the
11 sentencing shall be conducted as soon as practicable by the
12 original trial judge. In the case of a plea of guilty, the
13 sentencing proceeding shall be conducted as soon as practicable
14 by the original trial judge or by a jury upon demand of the
15 defendant.

16 C. In a jury sentencing proceeding, the judge shall
17 give appropriate instructions and allow arguments. The jury
18 shall retire to determine the verdict. In a nonjury sentencing
19 proceeding, or upon a plea of guilty where no jury has been
20 demanded, the judge shall allow argument and determine the
21 verdict."

22 SECTION 4. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2016.

