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SENATE BILL 75

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING FOR LIFE
IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE;
EXPANDING THE LIST OF AGGRAVATING CIRCUMSTANCES CONSIDERED IN A
CAPITAL FELONY CASE; 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 without
possibility of release or parole or death. The punishment
shall be imposed after a sentencing hearing separate from the
trial or guilty plea proceeding. However, if the defendant has

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1 not reached the age of majority at the time of the commission
2 of the capital felony for which he was convicted, he may be
3 sentenced to life imprisonment without possibility of release
4 or parole but shall not be punished by death.

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

11 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,
12 Chapter 24, Section 2, as amended) is amended to read:

13 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
14 LIFE IMPRISONMENT--EXCEPTION.--

15 A. When a defendant is convicted of a third violent
16 felony, and each violent felony conviction is part of a
17 separate transaction or occurrence, and at least the third
18 violent felony conviction is in New Mexico, the defendant
19 [~~shall~~], in addition to the sentence imposed for the third
20 violent conviction [~~when that sentence does not result in~~
21 ~~death~~], shall be punished by a sentence of life imprisonment.
22 The life imprisonment sentence shall be subject to parole
23 pursuant to the provisions of Section 31-21-10 NMSA 1978.

24 B. The sentence of life imprisonment shall be
25 imposed after a sentencing hearing, separate from the trial or

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1 guilty plea proceeding resulting in the third violent felony
2 conviction, pursuant to the provisions of Section 31-18-24 NMSA
3 1978.

4 C. For the purpose of this section, a violent
5 felony conviction incurred by a defendant before he reaches the
6 age of eighteen shall not count as a violent felony conviction.

7 D. When a defendant has a felony conviction from
8 another state, the felony conviction shall be considered a
9 violent felony for the purposes of the Criminal Sentencing Act
10 if that crime would be considered a violent felony in New
11 Mexico.

12 E. As used in the Criminal Sentencing Act:

13 (1) "great bodily harm" means an injury to the
14 person that creates a high probability of death or that causes
15 serious disfigurement or that results in permanent loss or
16 impairment of the function of any member or organ of the body;
17 and

18 (2) "violent felony" means:

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

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

24 (c) kidnapping resulting in great bodily
25 harm inflicted upon the victim by his captor, as provided in

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1 Subsection B of Section 30-4-1 NMSA 1978; [and]

2 (d) criminal sexual penetration, as
3 provided in Subsection C or Paragraph (5) or (6) of Subsection
4 D of Section 30-9-11 NMSA 1978; and

5 (e) robbery while armed with a deadly
6 weapon resulting in great bodily harm as provided in Section
7 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
8 1978. "

9 Section 3. Section 31-20A-1 NMSA 1978 (being Laws 1979,
10 Chapter 150, Section 2) is amended to read:

11 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

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

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

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

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

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

22 "31-20A-2. DETERMINATION OF SENTENCE. --

23 A. Capital sentencing deliberations shall be guided
24 by the following considerations:

25 (1) whether aggravating circumstances exist as

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1 enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978;

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

4 (3) whether other mitigating circumstances
5 exist.

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

12 Section 5. Section 31-20A-2.1 NMSA 1978 (being Laws 1991,
13 Chapter 30, Section 1) is amended to read:

14 "31-20A-2.1. [~~PROHIBITION AGAINST CAPITAL PUNISHMENT~~]
15 SENTENCING OF MENTALLY RETARDED PERSONS--PRESENTENCING
16 HEARING. --

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

23 B. [~~The penalty~~] A sentence of death shall not be
24 imposed on [~~any~~] a person who is mentally retarded.

25 C. Upon motion of the defense requesting a ruling

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

15 Section 6. Section 31-20A-3 NMSA 1978 (being Laws 1979,
16 Chapter 150, Section 4) is amended to read:

17 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
18 proceeding in which the jury unanimously finds beyond a
19 reasonable doubt and specifies at least one of the aggravating
20 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
21 NMSA 1978, and unanimously specifies the sentence of death
22 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the
23 court shall sentence the defendant to death. [~~Where~~] When a
24 sentence of death is not unanimously specified, or the jury
25 does not make the required finding, or the jury is unable to

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

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

12 "31-20A-5. AGGRAVATING CIRCUMSTANCES. --The aggravating
13 circumstances to be considered by the sentencing court or jury
14 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are
15 limited to the following:

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

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

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

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

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

13 F. the capital felony, with the deliberate intent
14 to kill, was committed for hire; [~~and~~]

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

21 H. the defendant, with the deliberate intent to
22 kill, murdered a child less than thirteen years of age;

23 I. the defendant, with the deliberate intent to
24 kill, murdered a person because of that person's present or
25 former status as a peace officer or employee of the corrections

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1 department;

2 J. the defendant, with the deliberate intent to
3 kill, murdered two or more people in a single incident; and

4 K. the defendant, with the deliberate intent to
5 kill, committed a murder in a heinous manner."

6 Section 8. Section 31-20A-6 NMSA 1978 (being Laws 1979,
7 Chapter 150, Section 7) is amended to read:

8 "31-20A-6. MITIGATING CIRCUMSTANCES. --The mitigating
9 circumstances to be considered by the sentencing court or the
10 jury pursuant to the provisions of Section [~~3 of this act~~]
11 31-20A-2 NMSA 1978 shall include but not be limited to the
12 following:

13 A. the defendant has no significant history of
14 prior criminal activity;

15 B. the defendant acted under duress or under the
16 domination of another person;

17 C. the defendant's capacity to appreciate the
18 [~~criminality~~] criminality of his conduct or to conform his
19 conduct to the requirements of the law was impaired;

20 D. the defendant was under the influence of mental
21 or emotional disturbance;

22 E. the victim was a willing participant in the
23 defendant's conduct;

24 F. the defendant acted under circumstances [~~which~~]
25 that tended to justify, excuse or reduce the crime;

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- 1 G. the defendant is likely to be rehabilitated;
- 2 H. the defendant cooperated with authorities; and
- 3 I. the defendant's age."

4 Section 9. Section 31-21-10 NMSA 1978 (being Laws 1980,
5 Chapter 28, Section 1, as amended) is amended to read:

6 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

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

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

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

21 (a) the circumstances of the offense;

22 (b) mitigating and aggravating

23 circumstances;

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

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1 (d) whether the inmate is a habitual
2 offender;

3 (e) the reports filed under Section
4 31-21-9 NMSA 1978; and

5 (f) the reports of such physical and
6 mental examinations as have been made while in ~~[prison]~~ an
7 institution;

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

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

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

17 ~~[B. Unless the board finds that it is in the best~~
18 ~~interest of society and the parolee to reduce the period of~~
19 ~~parole, a person who was convicted of a capital felony shall be~~
20 ~~required to undergo a minimum period of parole of five years.~~
21 ~~During the period of parole, the person shall be under the~~
22 ~~guidance and supervision of the board.]~~

23 B. An inmate of an institution who is sentenced to
24 life imprisonment without possibility of release or parole as
25 the result of his conviction for a capital felony is not

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1 eligible for parole and shall remain incarcerated for the
2 entirety of his natural life.

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

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

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

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

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

- 25 (1) to pay the actual costs of his parole

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

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

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

17 Section 10. REPEAL. --Section 31-18-14.1 NMSA 1978 (being
18 Laws 2001, Chapter 128, Section 1) is repealed.

19 Section 11. APPLICABILITY. --The provisions of this act
20 apply only to an individual convicted of a capital felony
21 offense committed on or after July 1, 2003. As to an
22 individual convicted of a capital felony offense committed
23 prior to July 1, 2003, the law regarding a capital felony
24 offense in effect at the time the offense was committed shall
25 apply.

