

HOUSE BILL 576

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE.

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 convicted, he may be sentenced to life imprisonment but shall~~

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1 ~~not be punished by death.~~

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

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

11 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
12 LIFE IMPRISONMENT--EXCEPTION.--

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

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

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1 1978.

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

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

10 E. As used in the Criminal Sentencing Act:

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

16 (2) "violent felony" means:

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

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

22 (c) kidnapping resulting in great bodily  
23 harm inflicted upon the victim by his captor, as provided in  
24 Subsection B of Section 30-4-1 NMSA 1978; [and]

25 (d) criminal sexual penetration, as

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1 provided in Subsection C or Paragraph (5) or (6) of Subsection  
2 D of Section 30-9-11 NMSA 1978; and

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

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

9 "31-20A-2. DETERMINATION OF SENTENCE.--

10 ~~[A. Capital sentencing deliberations shall be~~  
11 ~~guided by the following considerations:~~

12 ~~(1) whether aggravating circumstances exist as~~  
13 ~~enumerated in Section 6 of this act;~~

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

16 ~~(3) whether other mitigating circumstances~~  
17 ~~exist.~~

18 ~~B. After weighing the aggravating circumstances and~~  
19 ~~the mitigating circumstances, weighing them against each other,~~  
20 ~~and considering both the defendant and the crime, the jury or~~  
21 ~~judge shall determine whether the defendant should be sentenced~~  
22 ~~to death or life imprisonment.] If the jury finds, beyond a~~  
23 ~~reasonable doubt, that one or more aggravating circumstances~~  
24 ~~exist as enumerated in Section 31-20A-5 NMSA 1978, the~~  
25 ~~defendant shall be sentenced to life imprisonment without~~

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1 possibility of release or parole. If the jury does not make  
2 the required finding that one or more aggravating circumstances  
3 exist, the defendant shall be sentenced to life imprisonment."

4 Section 4. 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 was convicted of three violent felonies and  
10 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978  
11 or who was convicted of two violent sexual offenses and  
12 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
13 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a  
14 parole hearing after he has served thirty years of his  
15 sentence. Before ordering the parole of an inmate sentenced to  
16 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 an institution;

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

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

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

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

23 C. An inmate of an institution who was sentenced to  
24 life imprisonment without possibility of release or parole as  
25 the result of the commission of 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           ~~[G.]~~ D. Except for sex offenders as provided in  
4 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a  
5 first, second or third degree felony and who has served the  
6 sentence of imprisonment imposed by the court in an institution  
7 designated by the corrections department shall be required to  
8 undergo a two-year period of parole. An inmate who was  
9 convicted of a fourth degree felony and who has served the  
10 sentence of imprisonment imposed by the court in an institution  
11 designated by the corrections department shall be required to  
12 undergo a one-year period of parole. During the period of  
13 parole, the person shall be under the guidance and supervision  
14 of the board.

15           ~~[D.—Every]~~ E. A person ~~[while]~~ who is on parole  
16 shall remain in the legal custody of the institution from which  
17 he was released, but shall be subject to the orders of the  
18 board. The board shall furnish to each inmate as a  
19 prerequisite to his release under its supervision a written  
20 statement of the conditions of parole that shall be accepted  
21 and agreed to by the inmate as evidenced by his signature  
22 affixed to a duplicate copy to be retained in the files of the  
23 board. The board shall also require as a prerequisite to  
24 release the submission and approval of a parole plan. If an  
25 inmate refuses to affix his signature to the written statement

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1 of the conditions of his parole or does not have an approved  
2 parole plan, he shall not be released and shall remain in the  
3 custody of the institution in which he has served his sentence,  
4 excepting parole, until such time as the period of parole he  
5 was required to serve, less meritorious deductions, if any,  
6 expires, at which time he shall be released from that  
7 institution without parole, or until such time that he  
8 evidences his acceptance and agreement to the conditions of  
9 parole as required or receives approval for his parole plan or  
10 both. Time served from the date that an inmate refuses to  
11 accept and agree to the conditions of parole or fails to  
12 receive approval for his parole plan shall reduce the period,  
13 if any, to be served under parole at a later date. If the  
14 district court has ordered that the inmate make restitution to  
15 a victim as provided in Section 31-17-1 NMSA 1978, the board  
16 shall include restitution as a condition of parole. The board  
17 shall also personally apprise the inmate of the conditions of  
18 parole and his duties relating thereto.

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

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

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1 (1) to pay the actual costs of his parole  
2 services to the adult probation and parole division of the  
3 corrections department for deposit to the corrections  
4 department intensive supervision fund not exceeding one  
5 thousand eight hundred dollars (\$1,800) annually to be paid in  
6 monthly installments of not less than twenty-five dollars  
7 (\$25.00) and not more than one hundred fifty dollars (\$150), as  
8 set by the appropriate district supervisor of the adult  
9 probation and parole division, based upon the financial  
10 circumstances of the defendant. The defendant's payment of the  
11 supervised parole costs shall not be waived unless the board  
12 holds an evidentiary hearing and finds that the defendant is  
13 unable to pay the costs. If the board waives the defendant's  
14 payment of the supervised parole costs and the defendant's  
15 financial circumstances subsequently change so that the  
16 defendant is able to pay the costs, the appropriate district  
17 supervisor of the adult probation and parole division shall  
18 advise the board and the board shall hold an evidentiary  
19 hearing to determine whether the waiver should be rescinded;  
20 and

21 (2) to reimburse a law enforcement agency or  
22 local crime stopper program for the amount of any reward paid  
23 by the agency or program for information leading to his arrest,  
24 prosecution or conviction.

25 [~~G.~~] H. The provisions of this section shall apply

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1 to all inmates except geriatric, permanently incapacitated and  
2 terminally ill inmates eligible for the medical and geriatric  
3 parole program as provided by the Parole Board Act."

4 Section 5. REPEAL.--Sections 31-14-1 through 31-14-16,  
5 31-18-14.1, 31-20A-1, 31-20A-2.1 through 31-20A-4 and 31-20A-6  
6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10,  
7 Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150,  
8 Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929,  
9 Chapter 69, Sections 12 and 13, Laws 2001, Chapter 128, Section  
10 1, Laws 1979, Chapter 150, Section 2, Laws 1991, Chapter 30,  
11 Section 1 and Laws 1979, Chapter 150, Sections 4, 5 and 7, as  
12 amended) are repealed.

13 Section 6. EFFECTIVE DATE.--The effective date of the  
14 provisions of this act is July 1, 2005.