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HOUSE BILL 519

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Rodolpho "Rudy" S. Martinez

AN ACT

RELATING TO CRIMINAL SENTENCING; AMENDING SECTIONS OF THE
CRIMINAL CODE; ALLOWING INCARCERATION IN THE CORRECTIONS
DEPARTMENT FOR MISDEMEANOR CONVICTIONS; REQUIRING INCARCERATION
IN THE CORRECTIONS DEPARTMENT FOR ALL FELONY CONVICTIONS;
PROHIBITING IMPOSITION OF PAROLE IN CERTAIN CIRCUMSTANCES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977,
Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the

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1 death of a child, life imprisonment;

2 (2) for a first degree felony for aggravated
3 criminal sexual penetration, life imprisonment;

4 (3) for a first degree felony, eighteen years
5 imprisonment;

6 (4) for a second degree felony resulting in
7 the death of a human being, fifteen years imprisonment;

8 (5) for a second degree felony for a sexual
9 offense against a child, fifteen years imprisonment;

10 (6) for a second degree felony, nine years
11 imprisonment;

12 (7) for a third degree felony resulting in the
13 death of a human being, six years imprisonment;

14 (8) for a third degree felony for a sexual
15 offense against a child, six years imprisonment;

16 (9) for a third degree felony, three years
17 imprisonment; or

18 (10) for a fourth degree felony, eighteen
19 months imprisonment.

20 B. The appropriate basic sentence of imprisonment
21 shall be imposed upon a person convicted and sentenced pursuant
22 to Subsection A of this section, unless the court alters the
23 sentence pursuant to the provisions of the Criminal Sentencing
24 Act.

25 C. A period of parole shall be imposed only for

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1 felony convictions wherein a person is sentenced to
2 imprisonment of more than one year, unless the parties agree or
3 the court finds that imposing a period of parole is in the
4 interest of justice and public safety. If a period of parole
5 is imposed, the court shall include in the judgment and
6 sentence of each person convicted and sentenced to imprisonment
7 in a corrections facility designated by the corrections
8 department authority for a period of parole to be served in
9 accordance with the provisions of Section 31-21-10 NMSA 1978
10 after the completion of any actual time of imprisonment and
11 authority to require, as a condition of parole, the payment of
12 the costs of parole services and reimbursement to a law
13 enforcement agency or local crime stopper program in accordance
14 with the provisions of that section. If imposed, the period of
15 parole shall be deemed to be part of the sentence of the
16 convicted person in addition to the basic sentence imposed
17 pursuant to Subsection A of this section together with
18 alterations, if any, pursuant to the provisions of the Criminal
19 Sentencing Act.

20 D. When a court imposes a sentence of imprisonment
21 pursuant to the provisions of Section 31-18-15.1, 31-18-16
22 [~~31-18-16.1~~] or 31-18-17 NMSA 1978 and suspends or defers the
23 basic sentence of imprisonment provided pursuant to the
24 provisions of Subsection A of this section, the period of
25 parole shall be served in accordance with the provisions of

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1 Section 31-21-10 NMSA 1978 for the degree of felony for the
2 basic sentence for which the inmate was convicted. For the
3 purpose of designating a period of parole, a court shall not
4 consider that the basic sentence of imprisonment was suspended
5 or deferred and that the inmate served a period of imprisonment
6 pursuant to the provisions of the Criminal Sentencing Act.

7 E. The court may, in addition to the imposition of
8 a basic sentence of imprisonment, impose a fine not to exceed:

9 (1) for a first degree felony resulting in the
10 death of a child, seventeen thousand five hundred dollars
11 (\$17,500);

12 (2) for a first degree felony for aggravated
13 criminal sexual penetration, seventeen thousand five hundred
14 dollars (\$17,500);

15 (3) for a first degree felony, fifteen
16 thousand dollars (\$15,000);

17 (4) for a second degree felony resulting in
18 the death of a human being, twelve thousand five hundred
19 dollars (\$12,500);

20 (5) for a second degree felony for a sexual
21 offense against a child, twelve thousand five hundred dollars
22 (\$12,500);

23 (6) for a second degree felony, ten thousand
24 dollars (\$10,000);

25 (7) for a third degree felony resulting in the

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1 death of a human being, five thousand dollars (\$5,000);

2 (8) for a third degree felony for a sexual
3 offense against a child, five thousand dollars (\$5,000); or

4 (9) for a third or fourth degree felony, five
5 thousand dollars (\$5,000).

6 F. When the court imposes a sentence of
7 imprisonment for a felony offense, the court shall indicate
8 whether or not the offense is a serious violent offense, as
9 defined in Section 33-2-34 NMSA 1978. The court shall inform
10 an offender that the offender's sentence of imprisonment is
11 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
12 and 33-2-38 NMSA 1978. If the court fails to inform an
13 offender that the offender's sentence is subject to those
14 provisions or if the court provides the offender with erroneous
15 information regarding those provisions, the failure to inform
16 or the error shall not provide a basis for a writ of habeas
17 corpus.

18 G. No later than October 31 of each year, the
19 New Mexico sentencing commission shall provide a written report
20 to the secretary of corrections, all New Mexico criminal court
21 judges, the administrative office of the district attorneys and
22 the chief public defender. The report shall specify the
23 average reduction in the sentence of imprisonment for serious
24 violent offenses and nonviolent offenses, as defined in Section
25 33-2-34 NMSA 1978, due to meritorious deductions earned by

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1 prisoners during the previous fiscal year pursuant to the
2 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
3 NMSA 1978. The corrections department shall allow the
4 commission access to documents used by the department to
5 determine earned meritorious deductions for prisoners."

6 SECTION 2. Section 31-20-2 NMSA 1978 (being Laws 1963,
7 Chapter 303, Section 29-13, as amended) is amended to read:

8 "31-20-2. PLACE OF IMPRISONMENT--COMMITMENTS.--

9 A. ~~[Persons]~~ A person sentenced to imprisonment on
10 a misdemeanor conviction for a term of one year or more or on a
11 felony conviction, no matter the length of the term of
12 imprisonment, shall be imprisoned in a corrections facility
13 designated by the corrections department, unless:

14 (1) a new trial is granted; ~~[or a portion of~~
15 ~~the sentence is suspended so as to provide for imprisonment for~~
16 ~~not more than eighteen months]~~

17 (2) the convicted person is serving a period
18 of incarceration that is less than one year in a community
19 corrections program; or

20 (3) the term of imprisonment does not exceed
21 eighteen months and the corrections department has entered into
22 a joint powers agreement with a county jail; then the
23 imprisonment may be in such place of incarceration, other than
24 a corrections facility under the jurisdiction of the
25 corrections department, as the sentencing judge, in ~~[his]~~ the

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1 judge's discretion, may prescribe; provided that [~~a sentence of~~
2 ~~imprisonment for one year or more but not more than eighteen~~
3 ~~months shall be subject to the provisions of Subsections D and~~
4 ~~E of this section and shall not be imposed unless]~~ the
5 requirements set forth in [~~Subsection]~~ Subsections D and E of
6 this section are satisfied.

7 B. All commitments, judgments and orders of the
8 courts of this state for the imprisonment or release of persons
9 in the penitentiary of New Mexico shall run to the corrections
10 department, but nothing contained in this section shall
11 invalidate or impair the validity of any commitment, judgment
12 or order of any court in this state directed to the secretary
13 of corrections, the warden of the penitentiary of New Mexico or
14 to the penitentiary of New Mexico, and all such commitments,
15 judgments and orders shall be treated and construed as running
16 to the corrections department.

17 C. There is created within the corrections
18 department an "intake and classification center". The intake
19 and classification center shall have the following duties:
20 (1) process all inmates sentenced or committed
21 for purposes of diagnosis to the corrections department;
22 (2) classify inmates for housing assignments;
23 (3) develop an individualized plan for
24 participation by each inmate in programs, work assignments and
25 special needs;

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1 (4) monitor each inmate's progress during
2 incarceration and reclassify or modify classification
3 assignments as may be necessary, taking into consideration the
4 overall needs of the inmate population, institutional and
5 facility requirements and the individual inmate's needs;

6 (5) with the approval of the secretary of
7 corrections, may transfer inmates of the penitentiary of New
8 Mexico to an institution under the control of another state if
9 that state has entered into a corrections control agreement
10 with New Mexico; and

11 (6) with the approval of the secretary of
12 corrections, may transfer inmates to any facility, including
13 the forensic hospital under the jurisdiction of the department
14 of health.

15 D. A sentence [~~of one year or more but not more~~
16 ~~than eighteen months and providing~~] to imprisonment in a
17 corrections department facility that does not exceed eighteen
18 months and provides for imprisonment in a place of
19 incarceration other than a corrections facility under the
20 jurisdiction of the corrections department pursuant to
21 Subsection A of this section, which shall be known as the local
22 sentencing option, shall not be imposed unless:

23 (1) the place of incarceration is located
24 within the county in which the crime was committed; and

25 (2) the governing authority in charge of the

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1 place of incarceration has entered into a joint powers
2 agreement with the corrections department setting forth:

3 (a) the amount of money the corrections
4 department shall pay for offenders sentenced to a term of one
5 year or more but not more than eighteen months and the number
6 of offenders [~~which~~] that may be sentenced to such terms; and

7 (b) any other provisions deemed
8 appropriate and agreed to by the local governing body and the
9 corrections department.

10 E. If a judge imposes [~~a sentence of one year or~~
11 ~~more but not more than eighteen months~~] incarceration for a
12 term of one year or more on a misdemeanor conviction or any
13 incarceration on a felony conviction, if the period of
14 imprisonment does not exceed eighteen months and provides for
15 imprisonment in a place of incarceration other than a
16 corrections facility under the jurisdiction of the corrections
17 department:

18 (1) the local governing body or its agent
19 shall have the ability to petition that judge when the capacity
20 of the place of incarceration is filled or when any problem
21 develops concerning that offender requesting the judge to issue
22 an order committing the offender to the corrections department
23 for completion of the remainder of [~~his~~] the offender's
24 sentence. A hearing on a petition pursuant to this paragraph
25 shall be held within three days of the filing of the petition.

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1 Notwithstanding any other provision of law, the judge shall
2 retain jurisdiction over the offender for the purpose of
3 implementing the local sentencing option; and

4 (2) the local governing body or its agent
5 shall keep the district judges for the judicial district in
6 which the place of incarceration is located informed as to the
7 capacity for the sentencing of offenders in accordance with the
8 local sentencing option. No judge shall sentence an offender
9 in accordance with the local sentencing option if that sentence
10 will result in exceeding the number of offenders set forth in
11 the joint powers agreement.

12 F. The corrections department shall file an annual
13 report with the legislature [~~which~~] that shall contain the
14 number of joint powers agreements in operation pursuant to this
15 section, copies of those agreements, the number of offenders
16 currently incarcerated pursuant to those agreements and any
17 other relevant information relating to the implementation of
18 this section.

19 G. The corrections department may enter into
20 contracts with public or private detention facilities for the
21 purpose of housing inmates lawfully committed to the
22 corrections department. Any facility with which the department
23 contracts shall meet or exceed corrections department standards
24 prior to the housing of any inmates within the facility and
25 shall meet certification requirements for prisons within

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1 eight months of entering into such contracts. The
2 contractor shall adhere to all appropriate corrections
3 department policies and procedures and shall agree to have
4 staff trained at the corrections department training academy."

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

7 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

8 A. An inmate of an institution who was sentenced to
9 life imprisonment becomes eligible for a parole hearing after
10 the inmate has served thirty years of the sentence. Before
11 ordering the parole of an inmate sentenced to life
12 imprisonment, the board shall:

13 (1) interview the inmate at the institution
14 where the inmate is committed;

15 (2) consider all pertinent information
16 concerning the inmate, including:

17 (a) the circumstances of the offense;

18 (b) mitigating and aggravating
19 circumstances;

20 (c) whether a deadly weapon was used in
21 the commission of the offense;

22 (d) whether the inmate is [~~a~~] an
23 habitual offender;

24 (e) the reports filed under Section
25 31-21-9 NMSA 1978; and

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1 (f) the reports of such physical and
2 mental examinations as have been made while in an institution;

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

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

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

12 B. Unless the board finds that it is in the best
13 interest of society and the parolee to reduce the period of
14 parole, a person who was sentenced to life imprisonment shall
15 be required to undergo a minimum period of parole of five
16 years. During the period of parole, the person shall be under
17 the guidance and supervision of the board.

18 C. An inmate of an institution who was sentenced to
19 life imprisonment without possibility of release or parole is
20 not eligible for parole and shall remain incarcerated for the
21 entirety of the inmate's natural life.

22 D. Except for certain sex offenders as provided in
23 Section 31-21-10.1 NMSA 1978 and persons serving a period of
24 incarceration on felony convictions of one year or less who
25 have not otherwise agreed or been ordered to serve a period of

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1 parole by the court, as provided by Subsection C of Section
2 30-18-15 NMSA 1978, 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 an institution
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~~ a
8 sentence of imprisonment imposed by the court in an institution
9 designated by the corrections department that exceeds one year
10 or has agreed or been ordered to serve a period of parole by
11 the court shall be required to undergo a one-year period of
12 parole. During the period of parole, the person shall be under
13 the guidance and supervision of the board. An inmate who was
14 convicted of a misdemeanor or petty misdemeanor and who has
15 served the sentence of imprisonment imposed by the judge in an
16 institution designated by the corrections department is not
17 subject to a period of parole.

18 E. Every person while on parole shall remain in the
19 legal custody of the institution from which the person was
20 released but shall be subject to the orders of the board. The
21 board shall furnish to each inmate as a prerequisite to release
22 under its supervision a written statement of the conditions of
23 parole that shall be accepted and agreed to by the inmate as
24 evidenced by the inmate's signature affixed to a duplicate copy
25 to be retained in the files of the board. The board shall also

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1 require as a prerequisite to release the submission and
2 approval of a parole plan. If an inmate refuses to affix the
3 inmate's signature to the written statement of the conditions
4 of parole or does not have an approved parole plan, the inmate
5 shall not be released and shall remain in the custody of the
6 institution in which the inmate has served the inmate's
7 sentence, excepting parole, until such time as the period of
8 parole the inmate was required to serve, less meritorious
9 deductions, if any, expires, at which time the inmate shall be
10 released from that institution without parole, or until such
11 time that the inmate evidences acceptance and agreement to the
12 conditions of parole as required or receives approval for the
13 inmate's parole plan or both. Time served from the date that
14 an inmate refuses to accept and agree to the conditions of
15 parole or fails to receive approval for the inmate's parole
16 plan shall reduce the period, if any, to be served under parole
17 at a later date. If the district court has ordered that the
18 inmate make restitution to a victim as provided in Section
19 31-17-1 NMSA 1978, the board shall include restitution as a
20 condition of parole. The board shall also [~~personally~~] apprise
21 the inmate in person of the conditions of parole and the
22 inmate's duties relating thereto.

23 F. When a person on parole has performed the
24 obligations of the person's release for the period of parole
25 provided in this section, the board shall make a final order of

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1 discharge and issue the person a certificate of discharge.

2 G. Pursuant to the provisions of Section 31-18-15
3 NMSA 1978, the board shall require the inmate as a condition of
4 parole:

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

24 (2) to reimburse a law enforcement agency or
25 local crime stopper program for the amount of any reward paid

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1 by the agency or program for information leading to the
2 inmate's arrest, prosecution or conviction.

3 H. The provisions of this section shall apply to
4 all inmates except geriatric, permanently incapacitated and
5 terminally ill inmates eligible for the medical and geriatric
6 parole program as provided by the Parole Board Act."