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HOUSE BILL 176

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RITA G. GETTY

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING THAT CERTAIN
CRIMINAL OFFENDERS BE SENTENCED TO LIFE IMPRISONMENT WITHOUT
THE POSSIBILITY OF PAROLE; PROVIDING THAT PRISONERS SENTENCED
TO LIFE WITHOUT PAROLE SHALL BE CONFINED TO PRISON AND SHALL
NOT BE ELIGIBLE FOR SENTENCE SUSPENSION OR DEFERRAL OR FOR
MERITORIOUS DEDUCTION, INMATE RELEASE OR COMMUNITY RELEASE
PROGRAMS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of the Criminal Code is enacted
to read:

" [NEW MATERIAL] LIFE IMPRISONMENT WITHOUT THE POSSIBILITY
OF PAROLE--PRISON CONFINEMENT.--An inmate of an institution
who is sentenced to life imprisonment without the possibility
of parole shall never be eligible for a sentence suspension or

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1 deferral or to leave the physical confines of a prison
2 pursuant to any program, including an inmate release,
3 community release or work release program, that may be
4 available to other prison inmates."

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

7 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
8 LIFE IMPRISONMENT--EXCEPTION. --

9 A. When a defendant is convicted of a third
10 violent felony, and each violent felony conviction is part of
11 a separate transaction or occurrence, and at least the third
12 violent felony conviction is in New Mexico, the defendant
13 shall, [~~in addition to~~] when the sentence imposed for the
14 third violent conviction [~~when that sentence~~] does not result
15 in death, be punished by a sentence of life imprisonment [~~The~~
16 ~~life imprisonment sentence shall be subject to parole pursuant~~
17 ~~to the provisions of Section 31-21-10 NMSA 1978~~] without the
18 possibility of parole.

19 B. The sentence of life imprisonment shall be
20 imposed after a sentencing hearing, separate from the trial or
21 guilty plea proceeding resulting in the third violent felony
22 conviction, pursuant to the provisions of Section 31-18-24
23 NMSA 1978.

24 C. For the purpose of this section, a violent
25 felony conviction incurred by a defendant before he reaches

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1 the age of eighteen shall not count as a violent felony
2 conviction.

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

8 E. As used in the Criminal Sentencing Act:

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

14 (2) "violent felony" means:

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

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

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

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

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

5 Section 3. Section 31-18-25 NMSA 1978 (being Laws 1996,
6 Chapter 79, Section 1, as amended) is amended to read:

7 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
8 MANDATORY LIFE IMPRISONMENT-- EXCEPTION. --

9 A. When a defendant is convicted of a second
10 violent sexual offense, and each violent sexual offense
11 conviction is part of a separate transaction or occurrence,
12 and at least the second violent sexual offense conviction is
13 in New Mexico, the defendant shall [in addition to the
14 punishment imposed for the second violent sexual offense
15 conviction] be punished by a sentence of life imprisonment
16 [The life imprisonment sentence shall be subject to parole
17 pursuant to the provisions of Section 31-21-10 NMSA 1978]
18 without the possibility of parole.

19 [B. ~~Notwithstanding the provisions of Subsection A~~
20 ~~of this section, when a defendant is convicted of a second~~
21 ~~violent sexual offense, and each violent sexual offense~~
22 ~~conviction is part of a separate transaction or occurrence,~~
23 ~~and the victim of each violent sexual offense was less than~~
24 ~~thirteen years of age at the time of the offense, and at least~~
25 ~~the second violent sexual offense conviction is in New Mexico,~~

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1 ~~the defendant shall be punished by a sentence of life~~
2 ~~imprisonment without the possibility of parole.]~~

3 [C.] B. The sentence of life imprisonment shall be
4 imposed after a sentencing hearing, separate from the trial or
5 guilty plea proceeding resulting in the second violent sexual
6 offense conviction, pursuant to the provisions of Section
7 31-18-26 NMSA 1978.

8 [D.] C. For the purposes of this section, a
9 violent sexual offense conviction incurred by a defendant
10 before he reaches the age of eighteen shall not count as a
11 violent sexual offense conviction.

12 [E.] D. When a defendant has a felony conviction
13 from another state, the felony conviction shall be considered
14 a violent sexual offense for the purposes of the Criminal
15 Sentencing Act if the crime would be considered a violent
16 sexual offense in New Mexico.

17 [F.] E. As used in the Criminal Sentencing Act,
18 "violent sexual offense" means:

19 (1) criminal sexual penetration in the first
20 degree, as provided in Subsection C of Section 30-9-11 NMSA
21 1978; or

22 (2) criminal sexual penetration in the second
23 degree, as provided in Subsection D of Section 30-9-11 NMSA
24 1978. "

25 Section 4. Section 31-20-3 NMSA 1978 (being Laws 1963,
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1 Chapter 303, Section 29-15, as amended) is amended to read:
2 "31-20-3. ORDER DEFERRING OR SUSPENDING SENTENCE--
3 DIAGNOSTIC COMMITMENT.-- Upon entry of a judgment of conviction
4 of any crime not constituting a capital [~~or~~] felony, a first
5 degree felony or a felony that requires a sentence of life
6 imprisonment without the possibility of parole, any court
7 having jurisdiction, when it is satisfied that the ends of
8 justice and the best interest of the public as well as the
9 defendant will be served thereby, may either:
10 A. enter an order deferring the imposition of
11 sentence;
12 B. sentence the defendant and enter an order
13 suspending in whole or in part the execution of the sentence;
14 or
15 C. commit the convicted person, if convicted of a
16 felony and not committed for diagnostic purposes within the
17 twelve-month period immediately preceding that conviction, to
18 the [~~department of~~] corrections department for an
19 indeterminate period not to exceed sixty days for purposes of
20 diagnosis, with direction that the court be given a report
21 when the diagnosis is complete as to what disposition appears
22 best when the interest of the public and the individual are
23 evaluated. "
24 Section 5. Section 31-20A-3 NMSA 1978 (being Laws 1979,
25 Chapter 150, Section 4) is amended to read:

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1 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
2 proceeding in which the jury unanimously finds beyond a
3 reasonable doubt and specifies at least one of the aggravating
4 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
5 NMSA 1978, and unanimously specifies the sentence of death
6 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the
7 court shall sentence the defendant to death. Where a sentence
8 of death is not unanimously specified, or the jury does not
9 make the required finding, or the jury is unable to reach a
10 unanimous verdict, the court shall sentence the defendant to
11 life imprisonment without the possibility of parole. In a
12 nonjury sentencing proceeding and in cases involving a plea of
13 guilty, where no jury has been demanded, the judge shall
14 determine and impose the sentence, but he shall not impose the
15 sentence of death except upon a finding beyond a reasonable
16 doubt and specification of at least one of the aggravating
17 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5
18 NMSA 1978. "

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

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

22 A. An inmate of an institution who was sentenced
23 to life imprisonment is not eligible for parole if he:

24 (1) was sentenced as the result of the
25 commission of a capital felony; [~~who~~]

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1 (2) was convicted of three violent felonies
2 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
3 1978; or [who]

4 (3) was convicted of two violent sexual
5 offenses and sentenced pursuant to Subsection A of Section
6 31-18-25 NMSA 1978 and Section 31-18-26 NMSA 1978. [becomes
7 eligible for a parole hearing after he has served thirty years
8 of his sentence. Before ordering the parole of an inmate
9 sentenced to life imprisonment, the board shall:-

10 (1) ~~interview the inmate at the institution~~
11 ~~where he is committed;~~

12 (2) ~~consider all pertinent information~~
13 ~~concerning the inmate, including:-~~

14 (a) ~~the circumstances of the offense;~~

15 (b) ~~mitigating and aggravating~~
16 ~~circumstances;~~

17 (c) ~~whether a deadly weapon was used in~~
18 ~~the commission of the offense;~~

19 (d) ~~whether the inmate is a habitual~~
20 ~~offender;~~

21 (e) ~~the reports filed under Section~~
22 ~~31-21-9 NMSA 1978; and~~

23 (f) ~~the reports of such physical and~~
24 ~~mental examinations as have been made while in prison;~~

25 (3) ~~make a finding that a parole is in the~~

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1 ~~best interest of society and the inmate; and~~

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

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

10 ~~B. Unless the board finds that it is in the best~~
11 ~~interest of society and the parolee to reduce the period of~~
12 ~~parole, a person who was convicted of a capital felony shall~~
13 ~~be required to undergo a minimum period of parole of five~~
14 ~~years. During the period of parole, the person shall be under~~
15 ~~the guidance and supervision of the board.~~

16 ~~C.]~~ B. An inmate who was convicted of a first,
17 second or third degree felony and who has served the sentence
18 of imprisonment imposed by the court in a corrections facility
19 designated by the corrections department shall be required to
20 undergo a two-year period of parole. An inmate who was
21 convicted of a fourth degree felony and who has served the
22 sentence of imprisonment imposed by the court in a corrections
23 facility designated by the corrections department shall be
24 required to undergo a one-year period of parole. During the
25 period of parole, the person shall be under the guidance and

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1 supervision of the board.

2 ~~[D-]~~ C. Every person while on parole shall remain
3 in the legal custody of the institution from which he was
4 released, but shall be subject to the orders of the board.
5 The board shall furnish to each inmate as a prerequisite to
6 his release under its supervision a written statement of the
7 conditions of parole that shall be accepted and agreed to by
8 the inmate as evidenced by his signature affixed to a
9 duplicate copy to be retained in the files of the board. The
10 board shall also require as a prerequisite to release the
11 submission and approval of a parole plan. If an inmate
12 refuses to affix his signature to the written statement of the
13 conditions of his parole or does not have an approved parole
14 plan, he shall not be released and shall remain in the custody
15 of the corrections facility in which he has served his
16 sentence, excepting parole, until such time as the period of
17 parole he was required to serve, less meritorious deductions,
18 if any, expires, at which time he shall be released from that
19 facility without parole, or until such time that he evidences
20 his acceptance and agreement to the conditions of parole as
21 required or receives approval for his parole plan or both.
22 Time served from the date that an inmate refuses to accept and
23 agree to the conditions of parole or fails to receive approval
24 for his parole plan shall reduce the period, if any, to be
25 served under parole at a later date. If the district court

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1 has ordered that the inmate make restitution to a victim as
2 provided in Section 31-17-1 NMSA 1978, the board shall include
3 restitution as a condition of parole. The board shall also
4 personally apprise the inmate of the conditions of parole and
5 his duties relating thereto.

6 ~~[E-]~~ D. When a person on parole has performed the
7 obligations of his release for the period of parole provided
8 in this section, the board shall make a final order of
9 discharge and issue him a certificate of discharge.

10 ~~[F-]~~ E. Pursuant to the provisions of Section
11 31-18-15 NMSA 1978, the board shall require the inmate as a
12 condition of parole:

13 (1) to pay the actual costs of his parole
14 services to the adult probation and parole division of the
15 corrections department for deposit to the corrections
16 department intensive supervision fund not exceeding one
17 thousand twenty dollars (\$1,020) annually to be paid in
18 monthly installments of not less than fifteen dollars (\$15.00)
19 and not more than eighty-five dollars (\$85.00), subject to
20 modification by the adult probation and parole division on the
21 basis of changed financial circumstances; and

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

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1 [~~G-~~] F. The provisions of this section shall apply
2 to all inmates except geriatric, permanently incapacitated and
3 terminally ill inmates eligible for the medical and geriatric
4 parole program as provided by the Parole Board Act. "

5 Section 7. Section 33-2-34 NMSA 1978 (being Laws 1978,
6 Chapter 40, Section 1, as amended) is amended to read:

7 "33-2-34. MERITORIOUS DEDUCTIONS. --

8 A. Any inmate confined in the penitentiary of New
9 Mexico or other institution or reintegration program
10 designated by the corrections department for the confinement
11 of adult criminal offenders may be awarded a meritorious
12 deduction of thirty days per month upon recommendation of the
13 classification committee and approval of the warden; provided
14 that an inmate who:

15 (1) is sentenced to life imprisonment without
16 the possibility of parole shall not be eligible for
17 meritorious deductions;

18 [~~(1)~~] (2) disobeys an order to perform labor
19 pursuant to Section 33-8-4 NMSA 1978 shall not be eligible for
20 meritorious deductions;

21 [~~(2)~~] (3) is in disciplinary segregation
22 shall not be eligible for meritorious deductions;

23 [~~(3)~~] (4) is within his first sixty days of
24 receipt by the department shall not be eligible for
25 meritorious deductions; or

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1 [~~(4)~~] (5) is not engaged in programs
2 recommended and approved for him by the classification
3 committee shall not be eligible for meritorious deductions.
4 Programs include but are not limited to education, work,
5 counseling and the like.

6 The corrections department may award meritorious
7 deductions to New Mexico inmates confined in federal and out-
8 of-state corrections facilities on the basis of inmate conduct
9 reports, which shall be furnished by those facilities on a
10 periodic basis.

11 B. An inmate whose record of conduct shows that he
12 has performed exceptionally meritorious service and whose
13 record of conduct shows that he has otherwise faithfully
14 observed the rules of the institution may be eligible for a
15 lump-sum good time award, not to exceed one year per award and
16 not to exceed a total of one year for all lump-sum good time
17 awards awarded in any consecutive twelve-month period, which
18 may be deducted from the length of the sentence then remaining
19 unserved. Exceptionally meritorious service shall include
20 heroic acts of saving life or property, but shall not include
21 acts in performance of normal work duties or program
22 assignments. The classification committee and the warden may
23 recommend the number of days to be awarded in each case based
24 upon the particular merits, but any award shall be determined
25 by the director of the adult institutions division of the

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1 corrections department. Allowance for exceptionally
2 meritorious service shall be in addition to the meritorious
3 deduction provided for in Subsection A of this section, and in
4 the event two or more consecutive sentences are being served,
5 the aggregate of the several sentences shall be the basis upon
6 which the deduction shall be computed.

7 C. The meritorious deductions provided for in
8 Subsections A and B of this section shall pertain to both the
9 basic sentence to be served and any enhanced term of
10 imprisonment pursuant to the provisions of the Criminal
11 Sentencing Act. For inmates convicted of crimes committed on
12 or after the effective date of this 1988 act, meritorious
13 deductions of up to ninety days per occurrence shall be
14 permanently forfeited upon recommendation of the
15 classification committee and approval of the warden if the
16 inmate does not properly maintain the standard upon which the
17 award was based. For those inmates, permanent forfeitures in
18 excess of ninety days may be made upon approval of the
19 director of the adult institutions division. For inmates
20 convicted of crimes committed prior to the effective date of
21 this 1988 act, meritorious deductions may be terminated upon
22 recommendation of the classification committee and approval of
23 the warden if the inmate does not properly maintain the
24 standard upon which the award was based; provided that no
25 inmate shall forfeit more than fifty percent of his

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1 meritorious deductions accrued during the previous twelve
2 months; and further provided that after forfeiture of any
3 portion of an inmate's accrued meritorious deductions, the
4 remainder shall vest and shall not be subject to further
5 forfeiture.

6 D. The corrections department shall promulgate
7 rules and regulations for the implementation and determination
8 of meritorious deductions pursuant to this section, and the
9 rules or regulations shall be matters of public record. A
10 concise summary of the rules and regulations shall be provided
11 to every inmate, and every inmate shall receive a quarterly
12 statement of his accrued meritorious deductions. "

13 Section 8. Section 33-2-44 NMSA 1978 (being Laws 1969,
14 Chapter 166, Section 2, as amended) is amended to read:

15 "33-2-44. INMATE-RELEASE PROGRAM - STANDARDS FOR
16 PARTICIPATION. --The [~~superintendent~~] warden may, under the
17 inmate-release program and at the request of a prisoner,
18 extend the limits of confinement beyond the penitentiary of
19 New Mexico by authorizing the prisoner to work at paid
20 employment in private business or in public employment or to
21 attend a school while continuing as a prisoner, if the
22 prisoner:

- 23 A. is a trusty or a ~~minimum~~-custody inmate;
- 24 B. has physical and mental ability to fully
25 perform the proposed assignment consistent with his capacities

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1 and free from any out-patient care that would interfere with
2 full performance;

3 C. is not afflicted with any serious emotional or
4 personality defect;

5 D. has not been sentenced to life imprisonment
6 without the possibility of parole, convicted of a crime
7 involving assaultive sexual conduct [~~nor~~] or violence to a
8 child nor has been linked with organized criminal activity;
9 and

10 E. would not, in the opinion of the
11 [~~superintendent~~] warden, be likely to evoke an adverse public
12 reaction by his presence in the community."

13 Section 9. Section 33-9-7 NMSA 1978 (being Laws 1983,
14 Chapter 202, Section 7, as amended) is amended to read:

15 "33-9-7. STATE SELECTION PANEL. --

16 A. The department shall establish a state panel,
17 whose duties shall be to immediately screen and identify
18 criminal offenders sentenced to imprisonment in a correctional
19 facility of the department, except individuals sentenced or
20 transferred from a judicial district [~~which~~] that has
21 established a local panel to exercise these duties pursuant to
22 the provisions of Section 33-9-8 NMSA 1978, who meet the
23 following criteria:

24 (1) the offender has not been sentenced to
25 life imprisonment without the possibility of parole;

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1 [~~(1)~~] (2) the crime involved is one for which
2 community service or reasonable restitution may be made using
3 a payment schedule compatible with the total amount of
4 restitution to be paid and the time the offender is to
5 participate in a program; and

6 [~~(2)~~] (3) the offender is willing to enter
7 into a contract [~~which~~] that establishes objectives [~~which~~]
8 that shall be achieved before release from the program.

9 B. The department may establish criteria in
10 addition to those established in Subsection A of this section
11 for the screening of criminal offenders who would benefit from
12 participation in a program and who would not pose a threat to
13 the community.

14 C. If the state panel determines that a criminal
15 offender is suitable for placement in a program, a
16 recommendation to that effect and for modification of sentence
17 shall be presented as soon as possible to the sentencing
18 judge, who may, notwithstanding any provision of law, accept,
19 modify or reject the recommendation. The sentencing judge's
20 determination shall be presented to the county, municipality
21 or private nonprofit organization, as applicable, for approval
22 or rejection. In no event shall the sentencing judge order to
23 be placed into a program any criminal offender whom the state
24 selection panel has not approved. "

1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998
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6 January 28, 1998
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9 Mr. Speaker:
10

11 Your RULES AND ORDER OF BUSINESS COMMITTEE, to
12 whom has been referred
13

14
15 HOUSE BILL 176
16

17 has had it under consideration and finds same to be GERMANE
18 in accordance with constitutional provisions.
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21 Respectfully submitted,
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R. David Pederson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Lujan, Luna, Nicely, Picraux, Ryan, Sanchez, Williams,

S. M

Absent: None

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1 **FORTY-THIRD LEGISLATURE**
2 **SECOND SESSION, 1998**
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6 **February 9, 1998**
7

8 **Mr. Speaker:**
9

10 **Your JUDICIARY COMMITTEE, to whom has been referred**
11

12 **HOUSE BILL 176**
13

14 **has had it under consideration and reports same with**
15 **recommendation that it DO NOT PASS, and thence referred to**
16 **the APPROPRIATIONS AND FINANCE COMMITTEE.**

17 **Respectfully submitted,**
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21 _____
22 **Thomas P. Foy, Chairman**
23

24 **Adopted _____**

24 **Not Adopted _____**
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1 FORTY-THIRD LEGISLATURE
2 SECOND SESSION, 1998

3 HRC/HJC/HB 176

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4 (Chief Clerk)

(Chief Clerk)

7 Date _____

9 The roll call vote was 9 For 2 Against

10 Yes: 9

11 No: Larranaga, Mallory

12 Excused: King, Sanchez

13 Absent: None

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