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HOUSE BILL 479

**44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

INTRODUCED BY

R. David Pederson

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ESTABLISHING THREE  
LEVELS OF PUNISHMENT FOR CONVICTED CAPITAL FELONY OFFENDERS;  
AMENDING SECTIONS OF THE NMSA 1978.

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

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

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

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

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1           B. Upon a verdict by the jury or judge that the  
2 defendant is guilty of a capital felony, or upon a plea of  
3 guilty to a capital felony, the court shall conduct a separate  
4 sentencing proceeding to determine whether the defendant  
5 should be sentenced to death, life imprisonment without  
6 possibility of release or parole or life imprisonment [as  
7 ~~authorized herein~~]. In a jury trial, the sentencing  
8 proceeding shall be conducted as soon as practicable by the  
9 original trial judge before the original trial jury. In a  
10 nonjury trial, the sentencing proceeding shall be conducted as  
11 soon as practicable by the original trial judge. In the case  
12 of a plea of guilty to a capital felony, the sentencing  
13 proceeding shall be conducted as soon as practicable by the  
14 original trial judge or by a jury upon demand of a party.

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

21           D. In a jury sentencing proceeding, the judge  
22 shall give appropriate instructions and allow argument, and  
23 the jury shall retire to determine the punishment to be  
24 imposed. In a nonjury sentencing proceeding, or upon a plea  
25 of guilty, where no jury has been demanded, the judge shall

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1 allow argument and determine the punishment to be imposed."

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

4 "31-20A-2. DETERMINATION OF SENTENCE. --

5 A. Capital sentencing deliberations shall be  
6 guided by the following considerations:

7 (1) whether aggravating circumstances exist  
8 as enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978;

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

11 (3) whether other mitigating circumstances  
12 exist.

13 B. After weighing the aggravating circumstances  
14 and the mitigating circumstances, weighing them against each  
15 other, and considering both the defendant and the crime, the  
16 jury or judge shall determine whether the defendant should be  
17 sentenced to death, life imprisonment without possibility of  
18 release or parole or life imprisonment."

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

21 "31-20A-3. COURT SENTENCING. --

22 A. In a jury sentencing proceeding in which the  
23 jury unanimously finds beyond a reasonable doubt and specifies  
24 at least [~~one~~] two of the aggravating circumstances enumerated  
25 in Section [~~6 of this act~~] 31-20A-5 NMSA 1978, and unanimously

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1 specifies the sentence of death pursuant to Section [ ~~3 of this~~  
2 ~~act~~] 31-20A-2 NMSA 1978, the court shall sentence the  
3 defendant to death.

4 [Where] B. When a sentence of death is not  
5 unanimously specified, or the jury does not make the required  
6 finding, or the jury is unable to reach a unanimous verdict,  
7 the court shall sentence the defendant to life imprisonment.

8 C. In a jury sentencing proceeding in which the  
9 jury unanimously finds beyond a reasonable doubt and specifies  
10 one of the aggravating circumstances enumerated in Section  
11 31-20A-5 NMSA 1978, and unanimously specifies the sentence of  
12 life imprisonment without possibility of release or parole  
13 pursuant to Section 31-20A-2 NMSA 1978, the court shall  
14 sentence the defendant to life imprisonment without  
15 possibility of release or parole.

16 D. When a sentence of life imprisonment without  
17 possibility of release or parole is not unanimously specified,  
18 or the jury does not make the required finding, or the jury is  
19 unable to reach a unanimous verdict, the court shall sentence  
20 the defendant to life imprisonment.

21 E. In a nonjury sentencing proceeding and in cases  
22 involving a plea of guilty, where no jury has been demanded,  
23 the judge shall determine and impose the sentence, but he  
24 shall not impose the sentence of death except upon a finding  
25 beyond a reasonable doubt and specification of at least [ one]

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1 two of the aggravating circumstances enumerated in Section [ ~~6~~  
2 ~~of this act~~] 31-20A-5 NMSA 1978.

3 F. In a nonjury sentencing proceeding and in cases  
4 involving a plea of guilty, where no jury has been demanded,  
5 the judge shall determine and impose the sentence, but he  
6 shall not impose the sentence of life imprisonment without  
7 possibility of release or parole except upon a finding beyond  
8 a reasonable doubt and specification of one of the aggravating  
9 circumstances enumerated in Section 31-20A-5 NMSA 1978. "

10 Section 4. Section 31-20A-4 NMSA 1978 (being Laws 1979,  
11 Chapter 150, Section 5) is amended to read:

12 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

13 A. The judgment of conviction and sentence of  
14 death shall be automatically reviewed by the supreme court of  
15 the state of New Mexico. [B.] In addition to the other  
16 matters on appeal, the supreme court shall rule on the  
17 validity of the death sentence.

18 [C.] B. The death penalty shall not be imposed if:

19 (1) the evidence does not support the finding  
20 of [a] at least two of the statutory aggravating  
21 [~~circumstance~~] circumstances;

22 (2) the evidence supports a finding that the  
23 mitigating circumstances outweigh the aggravating  
24 circumstances;

25 (3) the sentence of death was imposed under

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1 the influence of passion, prejudice or any other arbitrary  
2 factor; or

3 (4) the sentence of death is excessive or  
4 disproportionate to the penalty imposed in similar cases,  
5 considering both the crime and the defendant.

6 C. The judgment of conviction and sentence of life  
7 imprisonment without possibility of release or parole shall be  
8 automatically reviewed by the supreme court of the state of  
9 New Mexico. In addition to the other matters on appeal, the  
10 supreme court shall rule on the validity of the sentence of  
11 life imprisonment without possibility of release or parole.

12 D. The sentence of life imprisonment without  
13 possibility of release or parole shall not be imposed if:

14 (1) the evidence does not support the finding  
15 of one statutory aggravating circumstance;

16 (2) the evidence supports a finding that the  
17 mitigating circumstances outweigh the aggravating  
18 circumstances;

19 (3) the sentence of life imprisonment without  
20 possibility of release or parole was imposed under the  
21 influence of passion, prejudice or any other arbitrary factor;  
22 or

23 (4) the sentence of life imprisonment without  
24 possibility of release or parole is excessive or  
25 disproportionate to the penalty imposed in similar cases,

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1 considering both the crime and the defendant.

2 [D-] E. No error in the sentencing proceeding  
3 shall result in the reversal of the conviction of a capital  
4 felony. If the trial court is reversed on appeal because of  
5 error only in the sentencing proceeding, the supreme court  
6 shall remand solely for a new sentencing proceeding. The new  
7 sentencing proceeding ordered and mandated shall apply only to  
8 the issue of punishment.

9 [E-] F. In cases of remand for a new sentencing  
10 proceeding, all exhibits and a transcript of all testimony and  
11 other evidence admitted in the prior trial and sentencing  
12 proceeding shall be admissible in the new sentencing  
13 proceeding, and:

14 (1) if the sentencing proceeding was before a  
15 jury, a new jury shall be impaneled for the new sentencing  
16 proceeding;

17 (2) if the sentencing proceeding was before a  
18 judge, the original trial judge shall conduct the new  
19 sentencing proceeding; or

20 (3) if the sentencing proceeding was before a  
21 judge and the original trial judge is unable or unavailable to  
22 conduct a new sentencing proceeding, then another judge shall  
23 be designated to conduct the new sentencing proceeding, and  
24 the parties are entitled to disqualify the new judge on the  
25 grounds set forth in Section 38-3-9 NMSA 1978 before the newly

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1 designated judge exercises any discretion."

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

4 "31-20A-5. AGGRAVATING CIRCUMSTANCES. -- The aggravating  
5 circumstances to be considered by the sentencing court or jury  
6 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are  
7 limited to the following:

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

11 B. the murder was committed with the deliberate  
12 intent to kill in the commission of or attempt to commit  
13 ~~[kidnaping]~~ kidnapping, criminal sexual contact of a minor or  
14 criminal sexual penetration;

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

18 D. while incarcerated in a penal institution in  
19 New Mexico, the defendant, with the deliberate intent to kill,  
20 murdered a person who was at the time incarcerated in or  
21 lawfully on the premises of a penal institution in New Mexico.  
22 As used in this subsection, "penal institution" includes  
23 facilities under the jurisdiction of the corrections [ ~~and~~  
24 ~~criminal rehabilitation~~] department and county and municipal  
25 jails;



1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 24, 1999

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8 Mr. Speaker:

9  
10 Your JUDICIARY COMMITTEE, to whom has been referred

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12 HOUSE BILL 479

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

16 1. On page 9, line 14, after "age;" insert "and".

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18 2. On page 9, line 17, after "occurance" strike "; and"  
19 and insert a period.

20  
21 3. On page 9, strike lines 18, 19, and 20 in their  
22 entirety.

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

3 HJC/HB 479 aa

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Respectfully submitted,

\_\_\_\_\_  
R. David Pederson, Chairman

Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Luna

Absent: None

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