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HOUSE BILL 733

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

INTRODUCED BY

R. David Pederson

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; ENACTING THE RACIAL JUSTICE ACT; PROHIBITING THE IMPOSITION OF CAPITAL PUNISHMENT ON THE BASIS OF A DEFENDANT'S RACE OR ETHNICITY.

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

Section 1. SHORT TITLE. -- This act may be cited as the "Racial Justice Act".

Section 2. PROHIBITION AGAINST CAPITAL PUNISHMENT ON THE BASIS OF A DEFENDANT'S RACE OR ETHNICITY. -- A defendant shall not be put to death under authority of state law as the result of a sentence imposed on the basis of the defendant's race or ethnicity.

Section 3. ESTABLISHMENT OF INFERENCE. -- An inference that a defendant was sentenced to death on the basis of the defendant's race or ethnicity is established if relevant

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1 evidence is presented to demonstrate that, at the time the
2 defendant was sentenced to death, race or ethnicity was a
3 statistically significant factor in other capital felony cases
4 in the jurisdiction.

5 Section 4. RELEVANT EVIDENCE. -- Relevant evidence
6 necessary to establish an inference that a defendant was
7 sentenced to death on the basis of the defendant's race or
8 ethnicity may include evidence that death sentences in other
9 cases in the jurisdiction were:

10 A. sought on a statistically significant greater
11 frequency against defendants of a certain race or ethnicity as
12 compared to defendants of another race or ethnicity; or

13 B. imposed on a statistically significant greater
14 frequency against defendants of a certain race or ethnicity as
15 compared to defendants of another race or ethnicity.

16 Section 5. DETERMINATION OF VALIDITY OF THE EVIDENCE--
17 REVIEW OF DETERMINATION. --

18 A. When evidence is presented to establish an
19 inference that a defendant was sentenced to death on the basis
20 of the defendant's race or ethnicity, the district court shall
21 determine the validity of the evidence and whether it
22 establishes the inference. Among other evidence it may
23 consider, the district court shall analyze evidence of
24 statutory aggravating circumstances present in other capital
25 felony cases in the jurisdiction and compare the final

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1 disposition of other capital felony cases in the jurisdiction
2 involving defendants of different races or ethnic backgrounds
3 with the instant capital felony case.

4 B. At the request of the prosecuting attorney or
5 defense counsel, the district court's determination regarding
6 the validity of evidence offered to establish an inference
7 that a defendant was sentenced to death based upon the
8 defendant's race or ethnicity is subject to de novo review by
9 the supreme court.

10 Section 6. REBUTTAL OF INFERENCE. --

11 A. When an inference is established that a
12 defendant was sentenced to death based upon his race or
13 ethnicity, the sentence of death shall not be carried out
14 unless the state successfully rebuts the inference by a
15 preponderance of the evidence.

16 B. The state cannot rely upon a mere assertion
17 that it did not intend to discriminate on the basis of race or
18 ethnicity when imposing a sentence of death on a defendant.

19 Section 7. CAPITAL FELONY CASES--DATA--SERVICES--
20 COSTS.--Data collected by public officials regarding factors
21 relevant to the imposition of a sentence of death in capital
22 felony cases shall be available to the public. A defendant in
23 a capital felony case who is indigent shall be provided with
24 legal representation and access to all facilities and services
25 necessary to present a defense. The cost of providing an

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1 indigent person with the services necessary to present a
2 defense shall be compensated from the state general fund.

3 Section 8. EFFECT ON OTHER CAPITAL FELONY CASES. --The
4 Racial Justice Act shall not be interpreted to affect the
5 validity of a sentence of death imposed on a defendant in a
6 capital felony case when the sentence was not based upon the
7 defendant's race or ethnicity.

8 Section 9. EFFECTIVE DATE. --The effective date of the
9 provisions of this act is July 1, 1999.