

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 239, 435 & 438

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH  
PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY  
OF RELEASE OR PAROLE; PROVIDING ADDITIONAL AGGRAVATING  
CIRCUMSTANCES FOR CONSIDERATION IN CAPITAL FELONY CASES;  
AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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~~

1 ~~time of the commission of the capital felony for which he was~~  
2 ~~convicted, he may be sentenced to life imprisonment but shall~~  
3 ~~not be punished by death.~~

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

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

13 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

21 B. Upon a verdict by the jury or judge that the  
22 defendant is guilty of a capital felony, or upon a plea of  
23 guilty to a capital felony, the court shall conduct a separate  
24 sentencing proceeding to determine whether the defendant  
25 should be sentenced to [~~death or life imprisonment as~~

1 ~~authorized herein]~~ life imprisonment or life imprisonment  
 2 without possibility of release or parole. In a jury trial,  
 3 the sentencing proceeding shall be conducted as soon as  
 4 practicable by the original trial judge before the original  
 5 trial jury. In a nonjury trial, the sentencing proceeding  
 6 shall be conducted as soon as practicable by the original  
 7 trial judge. In the case of a plea of guilty to a capital  
 8 felony, the sentencing proceeding shall be conducted as soon  
 9 as practicable by the original trial judge or by a jury upon  
 10 demand of a party.

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

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

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

25 "31-20A-2. DETERMINATION OF SENTENCE. --

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1           A. Capital sentencing deliberations shall be  
2 guided by [~~the following considerations:~~

3                   (1)] whether aggravating circumstances exist  
4 as enumerated in Section [~~6 of this act~~

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

7                   (3) ~~whether other mitigating circumstances~~  
8 ~~exist]~~ 31-20A-5 NMSA 1978.

9           B. After weighing the aggravating circumstances  
10 and [~~the mitigating circumstances, weighing them against each~~  
11 ~~other, and]~~ considering both the defendant and the crime, the  
12 jury or judge shall determine whether the defendant should be  
13 sentenced to [~~death or] life imprisonment or life imprisonment~~  
14 without possibility of release or parole."

15           Section 4. Section 31-20A-2.1 NMSA 1978 (being Laws  
16 1991, Chapter 30, Section 1) is amended to read:

17           "31-20A-2.1. [~~PROHIBITION AGAINST] CAPITAL PUNISHMENT OF~~  
18 ~~MENTALLY RETARDED PERSONS--PRESENTENCING HEARING.~~ --

19           A. As used in this section, "mentally retarded"  
20 means significantly subaverage general intellectual  
21 functioning existing concurrently with deficits in adaptive  
22 behavior. An intelligence quotient of seventy or below on a  
23 reliably administered intelligence quotient test shall be  
24 presumptive evidence of mental retardation.

25           B. The [~~penalty] sentence of [~~death] life~~~~

1 imprisonment without possibility of release or parole shall  
2 not be imposed on [~~any~~] a person who is mentally retarded.

3 C. Upon motion of the defense requesting a ruling  
4 that the [~~penalty of death be precluded under~~] sentence of  
5 life imprisonment without possibility of release or parole be  
6 precluded pursuant to this section, the court shall hold a  
7 hearing, prior to conducting the sentencing proceeding under  
8 Section 31-20A-3 NMSA 1978. If the court finds, by a  
9 preponderance of the evidence, that the defendant is mentally  
10 retarded, it shall sentence the defendant to life  
11 imprisonment. A ruling by the court that evidence of  
12 diminished intelligence introduced by the defendant does not  
13 preclude the [~~death penalty under~~] sentence of life  
14 imprisonment without possibility of release or parole pursuant  
15 to this section shall not restrict the defendant's opportunity  
16 to introduce such evidence at the sentencing proceeding or to  
17 argue that that evidence should be given mitigating  
18 significance. If the sentencing proceeding is conducted  
19 before a jury, the jury shall not be informed of any ruling  
20 denying a defendant's motion under this section. "

21 Section 5. Section 31-20A-3 NMSA 1978 (being Laws 1979,  
22 Chapter 150, Section 4) is amended to read:

23 "31-20A-3. COURT SENTENCING. -- In a jury sentencing  
24 proceeding in which the jury unanimously finds beyond a  
25 reasonable doubt and specifies at least one of the aggravating

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

19 Section 6. Section 31-20A-4 NMSA 1978 (being Laws 1979,  
20 Chapter 150, Section 5) is amended to read:

21 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

22 A. The judgment of conviction and sentence of  
23 ~~[death]~~ life imprisonment without possibility of release or  
24 parole shall be automatically reviewed by the supreme court of  
25 the state of New Mexico.

1           B. In addition to the other matters on appeal, the  
2 supreme court shall rule on the validity of the [~~death~~]  
3 sentence of life imprisonment without possibility of release  
4 or parole.

5           C. The [~~death penalty~~] sentence of life  
6 imprisonment without possibility of release or parole shall  
7 not be imposed if:

8                   (1) the evidence does not support the finding  
9 of a statutory aggravating circumstance;

10                   [~~(2) the evidence supports a finding that the~~  
11 ~~mitigating circumstances outweigh the aggravating~~  
12 ~~circumstances;~~

13                   ~~(3)~~ (2) the sentence of [~~death~~] life  
14 imprisonment without possibility of release or parole was  
15 imposed under the influence of passion, prejudice or any other  
16 arbitrary factor; or

17                   [~~(4)~~] (3) the sentence of [~~death~~] life  
18 imprisonment without possibility of release or parole is  
19 excessive or disproportionate to the penalty imposed in  
20 similar cases, considering both the crime and the defendant.

21           D. No error in the sentencing proceeding shall  
22 result in the reversal of the conviction of a capital felony.  
23 If the trial court is reversed on appeal because of error only  
24 in the sentencing proceeding, the supreme court shall remand  
25 solely for a new sentencing proceeding. The new sentencing

underscored material = new  
[bracketed material] = delete

1 proceeding ordered and mandated shall apply only to the issue  
2 of punishment.

3 E. In cases of remand for a new sentencing  
4 proceeding, all exhibits and a transcript of all testimony and  
5 other evidence admitted in the prior trial and sentencing  
6 proceeding shall be admissible in the new sentencing  
7 proceeding, and:

8 (1) if the sentencing proceeding was before a  
9 jury, a new jury shall be impaneled for the new sentencing  
10 proceeding;

11 (2) if the sentencing proceeding was before a  
12 judge, the original trial judge shall conduct the new  
13 sentencing proceeding; or

14 (3) if the sentencing proceeding was before a  
15 judge and the original trial judge is unable or unavailable to  
16 conduct a new sentencing proceeding, then another judge shall  
17 be designated to conduct the new sentencing proceeding, and  
18 the parties are entitled to disqualify the new judge on the  
19 grounds set forth in Section 38-3-9 NMSA 1978 before the newly  
20 designated judge exercises any discretion. "

21 Section 7. Section 31-20A-5 NMSA 1978 (being Laws 1979,  
22 Chapter 150, Section 6, as amended) is amended to read:

23 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--The aggravating  
24 circumstances to be considered by the sentencing court or jury  
25 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are



1 limited to the following:

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

5 B. the murder was committed with the deliberate  
6 intent to kill in the commission of or attempt to commit  
7 ~~[kidnaping]~~ kidnapping, criminal sexual contact of a minor or  
8 criminal sexual penetration;

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

12 D. while incarcerated in a penal institution in  
13 New Mexico, the defendant, with the deliberate intent to kill,  
14 murdered a person who was at the time incarcerated in or  
15 lawfully on the premises of a penal institution in New Mexico.

16 As used in this subsection, "penal institution" includes  
17 facilities under the jurisdiction of the corrections ~~[and~~  
18 ~~criminal rehabilitation]~~ department and county and municipal  
19 jails;

20 E. while incarcerated in a penal institution in  
21 New Mexico, the defendant, with the deliberate intent to kill,  
22 murdered an employee of the corrections ~~[and criminal~~  
23 ~~rehabilitation]~~ department;

24 F. the capital felony, with the deliberate intent  
25 to kill, was committed for hire; ~~[and]~~

1           G. the capital felony, with the deliberate intent  
2 to kill, was murder of a witness to a crime or any person  
3 likely to become a witness to a crime, for the purpose of  
4 preventing report of the crime or testimony in any criminal  
5 proceeding or for retaliation for the victim having testified  
6 in any criminal proceeding;

7           H. the defendant, with the deliberate intent to  
8 kill, murdered a person because of that person's present or  
9 former status as a peace officer or as a correctional officer;

10           I. the defendant, with the deliberate intent to  
11 kill, murdered a child less than thirteen years of age; and

12           J. the defendant, with the deliberate intent to  
13 kill, murdered two or more people in a single incident. "

14           Section 8. Section 31-21-10 NMSA 1978 (being Laws 1980,  
15 Chapter 28, Section 1, as amended) is amended to read:

16           "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

17           A. An inmate of an institution who was sentenced  
18 to life imprisonment as the result of the commission of a  
19 capital felony, who was convicted of three violent felonies  
20 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA  
21 1978 or who was convicted of two violent sexual offenses and  
22 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
23 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a  
24 parole hearing after he has served thirty years of his  
25 sentence. Before ordering the parole of an inmate sentenced

1 to life imprisonment, the board shall:

2 (1) interview the inmate at the institution  
3 where he is committed;

4 (2) consider all pertinent information  
5 concerning the inmate, including:

6 (a) the circumstances of the offense;

7 (b) mitigating and aggravating  
8 circumstances;

9 (c) whether a deadly weapon was used in  
10 the commission of the offense;

11 (d) whether the inmate is a habitual  
12 offender;

13 (e) the reports filed under Section  
14 31-21-9 NMSA 1978; and

15 (f) the reports of such physical and  
16 mental examinations as have been made while in prison;

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

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

22 If parole is denied, the inmate sentenced to life  
23 imprisonment shall again become entitled to a parole hearing  
24 at two-year intervals. The board may, on its own motion,  
25 reopen any case in which a hearing has already been granted

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1 and parole denied.

2 B. An inmate of an institution who was sentenced  
3 to life imprisonment without possibility of release or parole  
4 as the result of the commission of a capital felony is not  
5 eligible for parole and shall remain incarcerated for the  
6 entirety of his natural life.

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

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

24 [~~D.~~] E. Every person while on parole shall remain  
25 in the legal custody of the institution from which he was

1 released, but shall be subject to the orders of the board.  
2 The board shall furnish to each inmate as a prerequisite to  
3 his release under its supervision a written statement of the  
4 conditions of parole that shall be accepted and agreed to by  
5 the inmate as evidenced by his signature affixed to a  
6 duplicate copy to be retained in the files of the board. The  
7 board shall also require as a prerequisite to release the  
8 submission and approval of a parole plan. If an inmate  
9 refuses to affix his signature to the written statement of the  
10 conditions of his parole or does not have an approved parole  
11 plan, he shall not be released and shall remain in the custody  
12 of the corrections facility in which he has served his  
13 sentence, excepting parole, until such time as the period of  
14 parole he was required to serve, less meritorious deductions,  
15 if any, expires, at which time he shall be released from that  
16 facility without parole, or until such time that he evidences  
17 his acceptance and agreement to the conditions of parole as  
18 required or receives approval for his parole plan or both.  
19 Time served from the date that an inmate refuses to accept and  
20 agree to the conditions of parole or fails to receive approval  
21 for his parole plan shall reduce the period, if any, to be  
22 served under parole at a later date. If the district court  
23 has ordered that the inmate make restitution to a victim as  
24 provided in Section 31-17-1 NMSA 1978, the board shall include  
25 restitution as a condition of parole. The board shall also

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1 personally apprise the inmate of the conditions of parole and  
2 his duties relating thereto.

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

7 ~~[F.]~~ G. Pursuant to the provisions of Section  
8 31-18-15 NMSA 1978, the board shall require the inmate as a  
9 condition of parole:

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

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

23 ~~[G.]~~ H. The provisions of this section shall apply  
24 to all inmates except geriatric, permanently incapacitated and  
25 terminally ill inmates eligible for the medical and geriatric

1 parole program as provided by the Parole Board Act. "

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

8 Section 10. APPLICABILITY. -- The provisions of this act  
9 apply only to persons convicted of a capital felony offense  
10 committed on or after July 1, 2001. As to persons convicted  
11 of a capital felony offense committed prior to July 1, 2001,  
12 the laws with respect to capital felony offenses in effect at  
13 the time the offense was committed shall apply.

14 Section 11. EFFECTIVE DATE. -- The effective date of the  
15 provisions of this act is July 1, 2001.

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underscored material = new  
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