

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~~

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

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

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

14 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

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

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

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

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

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

3 A. Capital sentencing deliberations shall be guided  
4 by ~~[the following considerations:~~

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

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

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

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

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

19 "31-20A-2.1. ~~[PROHIBITION AGAINST]~~ CAPITAL PUNISHMENT OF  
20 MENTALLY RETARDED PERSONS--PRESENTENCING HEARING. --

21 A. As used in this section, "mentally retarded"  
22 means significantly subaverage general intellectual functioning  
23 existing concurrently with deficits in adaptive behavior. An  
24 intelligence quotient of seventy or below on a reliably  
25

1 administered intelligence quotient test shall be presumptive  
2 evidence of mental retardation.

3 B. The ~~[penalty]~~ sentence of ~~[death]~~ life  
4 imprisonment without possibility of release or parole shall not  
5 be imposed on ~~[any]~~ a person who is mentally retarded.

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

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

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

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

1 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

2 A. The judgment of conviction and sentence of  
3 [death] life imprisonment without possibility of release or  
4 parole shall be automatically reviewed by the supreme court of  
5 the state of New Mexico.

6 B. In addition to the other matters on appeal, the  
7 supreme court shall rule on the validity of the [death]  
8 sentence of life imprisonment without possibility of release or  
9 parole.

10 C. The [death penalty] sentence of life  
11 imprisonment without possibility of release or parole shall not  
12 be imposed if:

13 (1) the evidence does not support the finding  
14 of a statutory aggravating circumstance;

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

18 ~~(3)] (2)~~ the sentence of [death] life  
19 imprisonment without possibility of release or parole was  
20 imposed under the influence of passion, prejudice or any other  
21 arbitrary factor; or

22 ~~[(4)] (3)~~ the sentence of [death] life  
23 imprisonment without possibility of release or parole is  
24 excessive or disproportionate to the penalty imposed in similar  
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underscored material = new  
[bracketed material] = del etc

1 cases, considering both the crime and the defendant.

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

9 E. 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 the  
24 parties are entitled to disqualify the new judge on the grounds  
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1 set forth in Section 38-3-9 NMSA 1978 before the newly  
2 designated judge exercises any discretion. "

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

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

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

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

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

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

1 ~~criminal rehabilitation~~] department and county and municipal  
2 jails;

3 E. while incarcerated in a penal institution in New  
4 Mexico, the defendant, with the deliberate intent to kill,  
5 murdered an employee of the corrections [~~and criminal~~  
6 ~~rehabilitation~~] department;

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

9 G. the capital felony, with the deliberate intent  
10 to kill, was murder of a witness to a crime or any person  
11 likely to become a witness to a crime, for the purpose of  
12 preventing report of the crime or testimony in any criminal  
13 proceeding or for retaliation for the victim having testified  
14 in any criminal proceeding;

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

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

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

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

24 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --  
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1           A. An inmate of an institution who was sentenced to  
2 life imprisonment as the result of the commission of a capital  
3 felony, who was convicted of three violent felonies and  
4 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978  
5 or who was convicted of two violent sexual offenses and  
6 sentenced pursuant to Subsection A of Section 31-18-25 NMSA  
7 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a  
8 parole hearing after he has served thirty years of his  
9 sentence. Before ordering the parole of an inmate sentenced to  
10 life imprisonment, the board shall:

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

13                   (2) consider all pertinent information  
14 concerning the inmate, including:

15                           (a) the circumstances of the offense;

16                           (b) mitigating and aggravating  
17 circumstances;

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

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

22                           (e) the reports filed under Section  
23 31-21-9 NMSA 1978; and

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

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

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

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

11 B. An inmate of an institution who was sentenced to  
12 life imprisonment without possibility of release or parole as  
13 the result of the commission of a capital felony is not  
14 eligible for parole and shall remain incarcerated for the  
15 entirety of his natural life.

16 [~~B-~~] C. Unless the board finds that it is in the  
17 best interest of society and the parolee to reduce the period  
18 of parole, a person who was convicted of a capital felony shall  
19 be required to undergo a minimum period of parole of five  
20 years. During the period of parole, the person shall be under  
21 the guidance and supervision of the board.

22 [~~C-~~] D. An inmate who was convicted of a first,  
23 second or third degree felony and who has served the sentence  
24 of imprisonment imposed by the court in a corrections facility  
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1 designated by the corrections department shall be required to  
2 undergo a two-year period of parole. An inmate who was  
3 convicted of a fourth degree felony and who has served the  
4 sentence of imprisonment imposed by the court in a corrections  
5 facility designated by the corrections department shall be  
6 required to undergo a one-year period of parole. During the  
7 period of parole, the person shall be under the guidance and  
8 supervision of the board.

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

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

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

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

5 (2) to reimburse a law enforcement agency or  
6 local crime stopper program for the amount of any reward paid  
7 by the agency or program for information leading to his arrest,  
8 prosecution or conviction.

9 [~~G.~~] H. The provisions of this section shall apply  
10 to all inmates except geriatric, permanently incapacitated and  
11 terminally ill inmates eligible for the medical and geriatric  
12 parole program as provided by the Parole Board Act. "

13 Section 9. REPEAL. -- Sections 31-14-1 through 31-14-16 and  
14 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1  
15 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979,  
16 Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and  
17 4, Laws 1929, Chapter 69, Sections 12 and 13 and Laws 1979,  
18 Chapter 150, Section 7, as amended) are repealed.

19 Section 10. APPLICABILITY. -- The provisions of this act  
20 apply only to persons convicted of a capital felony offense  
21 committed on or after July 1, 2001. As to persons convicted of  
22 a capital felony offense committed prior to July 1, 2001, the  
23 laws with respect to capital felony offenses in effect at the  
24 time the offense was committed shall apply.

