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HOUSE BILL 137

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Al Park

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING A CAPITAL FELONY
OFFENDER, A THREE-STRIKES OFFENDER OR A REPEAT VIOLENT SEXUAL
OFFENDER TO REMAIN INCARCERATED FOR THE ENTIRETY OF HIS
NATURAL LIFE; AMENDING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-18-23 NMSA 1978 (being Laws 1994,
Chapter 24, Section 2, as amended) is amended to read:

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

A. When a defendant is convicted of a third
violent felony, and each violent felony conviction is part of
a separate transaction or occurrence, and at least the third
violent felony conviction is in New Mexico, the defendant
shall, in addition to the sentence imposed for the third

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1 violent conviction when that sentence does not result in
2 death, be punished by a sentence of life imprisonment. [~~The~~
3 ~~life imprisonment sentence shall be subject to parole pursuant~~
4 ~~to the provisions of Section 31-21-10 NMSA 1978.~~]

5 B. The sentence of life imprisonment shall be
6 imposed after a sentencing hearing, separate from the trial or
7 guilty plea proceeding resulting in the third violent felony
8 conviction, pursuant to the provisions of Section 31-18-24
9 NMSA 1978.

10 C. For the purpose of this section, a violent
11 felony conviction incurred by a defendant before he reaches
12 the age of eighteen shall not count as a violent felony
13 conviction.

14 D. When a defendant has a felony conviction from
15 another state, the felony conviction shall be considered a
16 violent felony for the purposes of the Criminal Sentencing Act
17 if that crime would be considered a violent felony in New
18 Mexico.

19 E. As used in the Criminal Sentencing Act:

20 (1) "great bodily harm" means an injury to
21 the person that creates a high probability of death or that
22 causes serious disfigurement or that results in permanent loss
23 or impairment of the function of any member or organ of the
24 body; and

25 (2) "violent felony" means:

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- (a) murder in the first or second degree, as provided in Section 30-2-1 NMSA 1978;
- (b) shooting at or from a motor vehicle resulting in great bodily harm, as provided in Subsection B of Section 30-3-8 NMSA 1978;
- (c) kidnapping resulting in great bodily harm inflicted upon the victim by his captor, as provided in Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]
- (d) criminal sexual penetration, as provided in Subsection C or Paragraph (5) or (6) of Subsection D of Section 30-9-11 NMSA 1978; and
- (e) robbery while armed with a deadly weapon resulting in great bodily harm, as provided in Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA 1978. "

Section 2. Section 31-18-25 NMSA 1978 (being Laws 1996, Chapter 79, Section 1, as amended) is amended to read:

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

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment imposed for the second violent sexual offense

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1 conviction, be punished by a sentence of life imprisonment.
2 ~~[The life imprisonment sentence shall be subject to parole~~
3 ~~pursuant to the provisions of Section 31-21-10 NMSA 1978.~~

4 ~~B. Notwithstanding the provisions of Subsection A~~
5 ~~of this section, when a defendant is convicted of a second~~
6 ~~violent sexual offense, and each violent sexual offense~~
7 ~~conviction is part of a separate transaction or occurrence,~~
8 ~~and the victim of each violent sexual offense was less than~~
9 ~~thirteen years of age at the time of the offense, and at least~~
10 ~~the second violent sexual offense conviction is in New Mexico,~~
11 ~~the defendant shall be punished by a sentence of life~~
12 ~~imprisonment without the possibility of parole.~~

13 ~~E.]~~ B. The sentence of life imprisonment shall be
14 imposed after a sentencing hearing, separate from the trial or
15 guilty plea proceeding resulting in the second violent sexual
16 offense conviction, pursuant to the provisions of Section
17 31-18-26 NMSA 1978.

18 ~~D.]~~ C. For the purposes of this section, a
19 violent sexual offense conviction incurred by a defendant
20 before he reaches the age of eighteen shall not count as a
21 violent sexual offense conviction.

22 ~~E.]~~ D. When a defendant has a felony conviction
23 from another state, the felony conviction shall be considered
24 a violent sexual offense for the purposes of the Criminal
25 Sentencing Act if the crime would be considered a violent

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1 sexual offense in New Mexico.

2 [F-] E. As used in the Criminal Sentencing Act,
3 "violent sexual offense" means:

4 (1) criminal sexual penetration in the first
5 degree, as provided in Subsection C of Section 30-9-11 NMSA
6 1978; or

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

10 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
11 Chapter 28, Section 1, as amended) is amended to read:

12 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

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

23 (1) ~~interview the inmate at the institution~~
24 ~~where he is committed;~~

25 (2) ~~consider all pertinent information~~

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1 ~~concerning the inmate, including:~~

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

3 ~~(b) mitigating and aggravating~~
4 ~~circumstances;~~

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

7 ~~(d) whether the inmate is a habitual~~
8 ~~offender;~~

9 ~~(e) the reports filed under Section~~
10 ~~31-21-9 NMSA 1978; and~~

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

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

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

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

23 ~~B. Unless the board finds that it is in the best~~
24 ~~interest of society and the parolee to reduce the period of~~
25 ~~parole, a person who was convicted of a capital felony shall~~

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1 ~~be required to undergo a minimum period of parole of five~~
2 ~~years. During the period of parole, the person shall be under~~
3 ~~the guidance and supervision of the board] is not eligible for~~
4 ~~parole and shall remain incarcerated for the entirety of his~~
5 ~~natural life.~~

6 [C.] B. An inmate who was convicted of a first,
7 second or third degree felony and who has served the sentence
8 of imprisonment imposed by the court in [~~a corrections~~
9 ~~facility] an institution designated by the corrections
10 department shall be required to undergo a two-year period of
11 parole. An inmate who was convicted of a fourth degree felony
12 and who has served the sentence of imprisonment imposed by the
13 court in [~~a corrections facility] an institution designated by
14 the corrections department shall be required to undergo a one-
15 year period of parole. During the period of parole, the
16 person shall be under the guidance and supervision of the
17 board.~~~~

18 [D.] C. Every person while on parole shall remain
19 in the legal custody of the institution from which he was
20 released, but shall be subject to the orders of the board.
21 The board shall furnish to each inmate as a prerequisite to
22 his release under its supervision a written statement of the
23 conditions of parole that shall be accepted and agreed to by
24 the inmate as evidenced by his signature affixed to a
25 duplicate copy to be retained in the files of the board. The

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

22 [E-] D. When a person on parole has performed the
23 obligations of his release for the period of parole provided
24 in this section, the board shall make a final order of
25 discharge and issue him a certificate of discharge.

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

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

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

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

Section 4. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2002.