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HOUSE BILL 438

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO CRIMINAL SENTENCING; REMOVING THE MANDATORY PAROLE  
PROVISION FOR PERSONS SENTENCED TO ONE YEAR OR LESS IN PRISON;  
REMOVING THE REQUIREMENT OF SENTENCING DEFENDANTS CONVICTED OF  
MISDEMEANORS TO A COUNTY JAIL; PROHIBITING THE IMPOSITION OF  
PAROLE IN CERTAIN CIRCUMSTANCES.

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

**SECTION 1.** Section 31-18-15 NMSA 1978 (being Laws 1977,  
Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,  
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the

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1 death of a child, life imprisonment;

2 (2) for a first degree felony for aggravated  
3 criminal sexual penetration, life imprisonment;

4 (3) for a first degree felony, eighteen years  
5 imprisonment;

6 (4) for a second degree felony resulting in  
7 the death of a human being, fifteen years imprisonment;

8 (5) for a second degree felony for a sexual  
9 offense against a child, fifteen years imprisonment;

10 (6) for a second degree felony, nine years  
11 imprisonment;

12 (7) for a third degree felony resulting in the  
13 death of a human being, six years imprisonment;

14 (8) for a third degree felony for a sexual  
15 offense against a child, six years imprisonment;

16 (9) for a third degree felony, three years  
17 imprisonment; or

18 (10) for a fourth degree felony, eighteen  
19 months imprisonment.

20 B. The appropriate basic sentence of imprisonment  
21 shall be imposed upon a person convicted and sentenced pursuant  
22 to Subsection A of this section, unless the court alters the  
23 sentence pursuant to the provisions of the Criminal Sentencing  
24 Act.

25 C. A period of parole shall be imposed only for

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1 felony convictions wherein a person is sentenced to  
2 imprisonment of more than one year, unless the parties to a  
3 proceeding agree that a period of parole should be imposed. If  
4 a period of parole is imposed, the court shall include in the  
5 judgment and sentence of each person convicted and sentenced to  
6 imprisonment in a corrections facility designated by the  
7 corrections department authority for a period of parole to be  
8 served in accordance with the provisions of Section 31-21-10  
9 NMSA 1978 after the completion of any actual time of  
10 imprisonment and authority to require, as a condition of  
11 parole, the payment of the costs of parole services and  
12 reimbursement to a law enforcement agency or local crime  
13 stopper program in accordance with the provisions of that  
14 section. If imposed, the period of parole shall be deemed to  
15 be part of the sentence of the convicted person in addition to  
16 the basic sentence imposed pursuant to Subsection A of this  
17 section together with alterations, if any, pursuant to the  
18 provisions of the Criminal Sentencing Act.

19 D. When a court imposes a sentence of imprisonment  
20 pursuant to the provisions of Section 31-18-15.1, 31-18-16  
21 [~~31-18-16.1~~] or 31-18-17 NMSA 1978 and suspends or defers the  
22 basic sentence of imprisonment provided pursuant to the  
23 provisions of Subsection A of this section, the period of  
24 parole shall be served in accordance with the provisions of  
25 Section 31-21-10 NMSA 1978 for the degree of felony for the

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1 basic sentence for which the inmate was convicted. For the  
2 purpose of designating a period of parole, a court shall not  
3 consider that the basic sentence of imprisonment was suspended  
4 or deferred and that the inmate served a period of imprisonment  
5 pursuant to the provisions of the Criminal Sentencing Act.

6 E. The court may, in addition to the imposition of  
7 a basic sentence of imprisonment, impose a fine not to exceed:

8 (1) for a first degree felony resulting in the  
9 death of a child, seventeen thousand five hundred dollars  
10 (\$17,500);

11 (2) for a first degree felony for aggravated  
12 criminal sexual penetration, seventeen thousand five hundred  
13 dollars (\$17,500);

14 (3) for a first degree felony, fifteen  
15 thousand dollars (\$15,000);

16 (4) for a second degree felony resulting in  
17 the death of a human being, twelve thousand five hundred  
18 dollars (\$12,500);

19 (5) for a second degree felony for a sexual  
20 offense against a child, twelve thousand five hundred dollars  
21 (\$12,500);

22 (6) for a second degree felony, ten thousand  
23 dollars (\$10,000);

24 (7) for a third degree felony resulting in the  
25 death of a human being, five thousand dollars (\$5,000);

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1 (8) for a third degree felony for a sexual  
2 offense against a child, five thousand dollars (\$5,000); or

3 (9) for a third or fourth degree felony, five  
4 thousand dollars (\$5,000).

5 F. When the court imposes a sentence of  
6 imprisonment for a felony offense, the court shall indicate  
7 whether or not the offense is a serious violent offense, as  
8 defined in Section 33-2-34 NMSA 1978. The court shall inform  
9 an offender that the offender's sentence of imprisonment is  
10 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37  
11 and 33-2-38 NMSA 1978. If the court fails to inform an  
12 offender that the offender's sentence is subject to those  
13 provisions or if the court provides the offender with erroneous  
14 information regarding those provisions, the failure to inform  
15 or the error shall not provide a basis for a writ of habeas  
16 corpus.

17 G. No later than October 31 of each year, the  
18 New Mexico sentencing commission shall provide a written report  
19 to the secretary of corrections, all New Mexico criminal court  
20 judges, the administrative office of the district attorneys and  
21 the chief public defender. The report shall specify the  
22 average reduction in the sentence of imprisonment for serious  
23 violent offenses and nonviolent offenses, as defined in Section  
24 33-2-34 NMSA 1978, due to meritorious deductions earned by  
25 prisoners during the previous fiscal year pursuant to the

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1 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
2 NMSA 1978. The corrections department shall allow the  
3 commission access to documents used by the department to  
4 determine earned meritorious deductions for prisoners."

5 SECTION 2. Section 31-19-1 NMSA 1978 (being Laws 1963,  
6 Chapter 303, Section 29-4, as amended) is amended to read:

7 "31-19-1. SENTENCING AUTHORITY--MISDEMEANORS--  
8 IMPRISONMENT AND FINES--PROBATION.--

9 A. Where the defendant has been convicted of a  
10 crime constituting a misdemeanor, the judge shall sentence the  
11 person to be imprisoned [~~in the county jail~~] for a definite  
12 term less than one year or to the payment of a fine of not more  
13 than one thousand dollars (\$1,000) or to both such imprisonment  
14 and fine in the discretion of the judge.

15 B. Where the defendant has been convicted of a  
16 crime constituting a petty misdemeanor, the judge shall  
17 sentence the person to be imprisoned in the county jail for a  
18 definite term not to exceed six months or to the payment of a  
19 fine of not more than five hundred dollars (\$500) or to both  
20 such imprisonment and fine in the discretion of the judge.

21 C. When the court has deferred or suspended  
22 sentence, it shall order the defendant placed on supervised or  
23 unsupervised probation for all or some portion of the period of  
24 deferment or suspension."

25 SECTION 3. Section 31-21-10 NMSA 1978 (being Laws 1980,

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1 Chapter 28, Section 1, as amended) is amended to read:

2 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

3 A. An inmate of an institution who was sentenced to  
4 life imprisonment becomes eligible for a parole hearing after  
5 the inmate has served thirty years of the sentence. Before  
6 ordering the parole of an inmate sentenced to life  
7 imprisonment, the board shall:

8 (1) interview the inmate at the institution  
9 where the inmate is committed;

10 (2) consider all pertinent information  
11 concerning the inmate, including:

12 (a) the circumstances of the offense;

13 (b) mitigating and aggravating  
14 circumstances;

15 (c) whether a deadly weapon was used in  
16 the commission of the offense;

17 (d) whether the inmate is [~~a~~] an  
18 habitual offender;

19 (e) the reports filed under Section  
20 31-21-9 NMSA 1978; and

21 (f) the reports of such physical and  
22 mental examinations as have been made while in an institution;

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

25 (4) make a finding that the inmate is able and

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1 willing to fulfill the obligations of a law-abiding citizen.

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

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

13 C. An inmate of an institution who was sentenced to  
14 life imprisonment without possibility of release or parole is  
15 not eligible for parole and shall remain incarcerated for the  
16 entirety of the inmate's natural life.

17 D. Except for certain sex offenders as provided in  
18 Section 31-21-10.1 NMSA 1978 and persons serving a period of  
19 incarceration on felony convictions of one year or less who  
20 have been ordered to serve a period of parole by the court, as  
21 provided by Subsection C of Section 30-18-15 NMSA 1978, an  
22 inmate who was convicted of a first, second or third degree  
23 felony and who has served the sentence of imprisonment imposed  
24 by the court in an institution designated by the corrections  
25 department shall be required to undergo a two-year period of

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1 parole. An inmate who was convicted of a fourth degree felony  
2 and who has served ~~[the]~~ a sentence of imprisonment imposed by  
3 the court in an institution designated by the corrections  
4 department that exceeds one year or has agreed and been ordered  
5 to serve a period of parole by the court shall be required to  
6 undergo a one-year period of parole. During the period of  
7 parole, the person shall be under the guidance and supervision  
8 of the board. An inmate who was convicted of a misdemeanor or  
9 petty misdemeanor and who has served the sentence of  
10 imprisonment imposed by the judge in an institution designated  
11 by the corrections department is not subject to a period of  
12 parole.

13 E. Every person while on parole shall remain in the  
14 legal custody of the institution from which the person was  
15 released but shall be subject to the orders of the board. The  
16 board shall furnish to each inmate as a prerequisite to release  
17 under its supervision a written statement of the conditions of  
18 parole that shall be accepted and agreed to by the inmate as  
19 evidenced by the inmate's signature affixed to a duplicate copy  
20 to be retained in the files of the board. The board shall also  
21 require as a prerequisite to release the submission and  
22 approval of a parole plan. If an inmate refuses to affix the  
23 inmate's signature to the written statement of the conditions  
24 of parole or does not have an approved parole plan, the inmate  
25 shall not be released and shall remain in the custody of the

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1 institution in which the inmate has served the inmate's  
2 sentence, excepting parole, until such time as the period of  
3 parole the inmate was required to serve, less meritorious  
4 deductions, if any, expires, at which time the inmate shall be  
5 released from that institution without parole, or until such  
6 time that the inmate evidences acceptance and agreement to the  
7 conditions of parole as required or receives approval for the  
8 inmate's parole plan or both. Time served from the date that  
9 an inmate refuses to accept and agree to the conditions of  
10 parole or fails to receive approval for the inmate's parole  
11 plan shall reduce the period, if any, to be served under parole  
12 at a later date. If the district court has ordered that the  
13 inmate make restitution to a victim as provided in Section  
14 31-17-1 NMSA 1978, the board shall include restitution as a  
15 condition of parole. The board shall also [~~personally~~] apprise  
16 the inmate in person of the conditions of parole and the  
17 inmate's duties relating thereto.

18 F. When a person on parole has performed the  
19 obligations of the person's release for the period of parole  
20 provided in this section, the board shall make a final order of  
21 discharge and issue the person a certificate of discharge.

22 G. Pursuant to the provisions of Section 31-18-15  
23 NMSA 1978, the board shall require the inmate as a condition of  
24 parole:

25 (1) to pay the actual costs of parole services

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1 to the adult probation and parole division of the corrections  
2 department for deposit to the corrections department intensive  
3 supervision fund not exceeding one thousand eight hundred  
4 dollars (\$1,800) annually to be paid in monthly installments of  
5 not less than twenty-five dollars (\$25.00) and not more than  
6 one hundred fifty dollars (\$150), as set by the appropriate  
7 district supervisor of the adult probation and parole division,  
8 based upon the financial circumstances of the defendant. The  
9 defendant's payment of the supervised parole costs shall not be  
10 waived unless the board holds an evidentiary hearing and finds  
11 that the defendant is unable to pay the costs. If the board  
12 waives the defendant's payment of the supervised parole costs  
13 and the defendant's financial circumstances subsequently change  
14 so that the defendant is able to pay the costs, the appropriate  
15 district supervisor of the adult probation and parole division  
16 shall advise the board and the board shall hold an evidentiary  
17 hearing to determine whether the waiver should be rescinded;  
18 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 the  
22 inmate's arrest, prosecution or conviction.

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

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

2 SECTION 4. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2013.

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