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SENATE BILL 221

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

DUNCAN SCOTT

AN ACT

RELATING TO CRIMINAL LAW; REQUIRING LIFE IMPRISONMENT WHEN A  
DEFENDANT IS CONVICTED OF A THIRD CRIMINAL OFFENSE THAT IS A  
FIRST OR SECOND DEGREE FELONY OFFENSE; 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) is amended to read:

"31-18-23. ~~THREE [VIOLENT]~~ FIRST OR SECOND DEGREE FELONY  
CONVICTIONS--MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

A. When a defendant is convicted of a third  
~~[violent]~~ first or second degree felony and each ~~[violent]~~ first  
or second degree felony conviction is part of a separate  
transaction or occurrence and at least the third ~~[violent]~~ first  
or second degree felony conviction is in New Mexico, the

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1 defendant shall, in addition to the punishment imposed for the  
2 third ~~[violent]~~ first or second degree felony conviction ~~[and]~~  
3 when that sentence does not result in death, be punished by a  
4 sentence of life imprisonment. The life imprisonment sentence  
5 shall be subject to parole pursuant to the provisions of Section  
6 31-21-10 NMSA 1978.

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

12 C. For the purpose of this section, a ~~[violent]~~  
13 first or second degree felony conviction incurred by a defendant  
14 before he reaches the age of eighteen shall not count as a  
15 ~~[violent]~~ first or second degree felony conviction.

16 D. When a defendant has a felony conviction from  
17 another state, the felony conviction shall be considered a  
18 ~~[violent]~~ first or second degree felony for the purposes of the  
19 Criminal Sentencing Act if that crime would be considered a  
20 ~~[violent]~~ first or second degree felony in New Mexico.

21 ~~[E. As used in the Criminal Sentencing Act:-~~

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

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1 and

2 ~~(2) "violent felony" means:~~

3 ~~(a) murder in the first or second degree,~~  
4 ~~as provided in Section 30-2-1 NMSA 1978;~~

5 ~~(b) shooting at or from a motor vehicle~~  
6 ~~resulting in great bodily harm, as provided in Subsection B of~~  
7 ~~Section 30-3-8 NMSA 1978;~~

8 ~~(c) kidnaping resulting in great bodily~~  
9 ~~harm inflicted upon the victim by his captor, as provided in~~  
10 ~~Subsection B of Section 30-4-1 NMSA 1978; and~~

11 ~~(d) criminal sexual penetration, as~~  
12 ~~provided in Subsection C or Paragraph (4) or (5) of Subsection D~~  
13 ~~of Section 30-9-11 NMSA 1978; and~~

14 ~~(e) robbery while armed with a deadly~~  
15 ~~weapon resulting in great bodily harm as provided in Section~~  
16 ~~30-16-2 NMSA 1978 and Section 30-1-12 (A) NMSA 1978.]"~~

17 Section 2. Section 31-18-24 NMSA 1978 (being Laws 1994,  
18 Chapter 24, Section 3) is amended to read:

19 "31-18-24. ~~[VIOLENT FELONY]~~ THREE FIRST OR SECOND DEGREE  
20 FELONY CONVICTIONS - SENTENCING PROCEDURE. - -

21 A. The court shall conduct a separate sentencing  
22 proceeding to determine any controverted question of fact  
23 regarding whether the defendant has been convicted of three  
24 ~~[violent]~~ first or second degree felonies. Either party to the  
25 action may demand a jury trial.

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1           B. In a jury trial, the sentencing proceeding shall  
2 be conducted as soon as practicable by the original trial judge  
3 before the original trial jury. In a nonjury trial, the  
4 sentencing shall be conducted as soon as practicable by the  
5 original trial judge. In the case of a plea of guilty, the  
6 sentencing proceeding shall be conducted as soon as practicable  
7 by the original trial judge or by a jury upon demand of the  
8 defendant.

9           C. In a jury sentencing proceeding, the judge shall  
10 give appropriate instructions and allow arguments. The jury  
11 shall retire to determine the verdict. In a nonjury sentencing  
12 proceeding, or upon a plea of guilty where no jury has been  
13 demanded, the judge shall allow argument and determine the  
14 verdict. "

15           Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,  
16 Chapter 28, Section 1, as amended by Laws 1994, Chapter 21,  
17 Section 1 and also by Laws 1994, Chapter 24, Section 4) is  
18 amended to read:

19           "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --  
20           A. An inmate of an institution who was sentenced to  
21 life imprisonment as the result of the commission of a capital  
22 felony, or who was convicted of three ~~[violent]~~ first or second  
23 degree felonies and sentenced pursuant to ~~[Section]~~ Sections  
24 31-18-23 and 31-18-24 NMSA 1978, becomes eligible for a parole  
25 hearing after he has served thirty years of his sentence.

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1 Before ordering the parole of an inmate sentenced to life  
2 imprisonment, the board shall:

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

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

7 (a) the circumstances of the offense;

8 (b) mitigating and aggravating  
9 circumstances;

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

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

14 (e) the reports filed under Section  
15 31-21-9 NMSA 1978; and

16 (f) the reports of [~~such~~] physical and  
17 mental examinations [~~as~~] that have been made while in prison;

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

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

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

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1 denied.

2 B. Unless the board finds that it is in the best  
3 interest of society and the parolee to reduce the period of  
4 parole, a person who was convicted of a capital felony shall be  
5 required to undergo a minimum period of parole of five years.  
6 During the period of parole, the person shall be under the  
7 guidance and supervision of the board.

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

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

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

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

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

4 (1) to pay the actual costs of his parole  
5 services to the ~~[field services]~~ adult probation and parole  
6 division of the corrections department for deposit to the  
7 corrections department intensive supervision fund, not exceeding  
8 one thousand twenty dollars (\$1,020) annually, to be paid in  
9 monthly installments of not less than fifteen dollars (\$15.00)  
10 and not more than eighty-five dollars (\$85.00), subject to  
11 modification by the ~~[appropriate district supervisor of the~~  
12 ~~field services]~~ adult probation and parole division on the basis  
13 of changed financial circumstances; and

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

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

22 Section 4. EFFECTIVE DATE. -- The effective date of the  
23 provisions of this act is July 1, 1996.



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5 JANUARY 24, 1996  
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7 Mr. Presi dent:  
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9 Your COMMI TTEES' COMMI TTEE, to whom has been referred  
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11 SENATE BILL 221  
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13 has had it under consideration and finds same to be GERMANE, PURSUANT  
14 TO EXECUTIVE MESSAGE NUMBER FIVE, and thence referred to the PUBLIC  
15 AFFAI RS COMMI TTEE.  
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17 Respectfully submi tted,  
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23 SENATOR MANNY M. ARAGON, Chai rman  
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(Chief Clerk)

(Chief Clerk)

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