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SENATE BILL 227

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

INTRODUCED BY

Manny M Aragon

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE; 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 time of the commission of the capital felony for which he was

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1 ~~convicted, he may be sentenced to life imprisonment but shall~~  
2 ~~not be punished by death.~~

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

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

12 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

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

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

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

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

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

24 "31-20A-2. DETERMINATION OF SENTENCE. --

25 A. Capital sentencing deliberations shall be

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1 guided by [~~the following considerations:~~

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

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

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

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

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

16 "31-20A-2.1. [~~PROHIBITION AGAINST]~~ CAPITAL PUNISHMENT OF  
17 ~~MENTALLY RETARDED PERSONS--PRESENTENCING HEARING.~~ --

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

24 B. The [~~penalty]~~ sentence of [~~death]~~ life  
25 imprisonment without possibility of release or parole shall

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1 not be imposed on ~~[any]~~ a person who is mentally retarded.

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

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

22 "31-20A-3. COURT SENTENCING. --In a jury sentencing  
23 proceeding in which the jury unanimously finds beyond a  
24 reasonable doubt and specifies at least one of the aggravating  
25 circumstances enumerated in Section ~~[6 of this act and~~

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

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

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

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

25 B. In addition to the other matters on appeal, the

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1 supreme court shall rule on the validity of the [death]  
2 sentence of life imprisonment without possibility of release  
3 or parole.

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

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

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

12 [~~(3)~~] (2) the sentence of [death] life  
13 imprisonment without possibility of release or parole was  
14 imposed under the influence of passion, prejudice or any other  
15 arbitrary factor; or

16 [~~(4)~~] (3) the sentence of [death] life  
17 imprisonment without possibility of release or parole is  
18 excessive or disproportionate to the penalty imposed in  
19 similar cases, considering both the crime and the defendant.

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

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1 of punishment.

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

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

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

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

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

22 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--The aggravating  
23 circumstances to be considered by the sentencing court or jury  
24 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are  
25 limited to the following:

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

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

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

11           D. while incarcerated in a penal institution in  
12 New Mexico, the defendant, with the deliberate intent to kill,  
13 murdered a person who was at the time incarcerated in or  
14 lawfully on the premises of a penal institution in New Mexico.  
15 As used in this subsection, "penal institution" includes  
16 facilities under the jurisdiction of the corrections ~~[and~~  
17 ~~criminal rehabilitation]~~ department and county and municipal  
18 jails;

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

23           F. the capital felony, with the deliberate intent  
24 to kill, was committed for hire; and

25           G. the capital felony, with the deliberate intent

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1 to kill, was murder of a witness to a crime or any person  
2 likely to become a witness to a crime, for the purpose of  
3 preventing report of the crime or testimony in any criminal  
4 proceeding or for retaliation for the victim having testified  
5 in any criminal proceeding. "

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

8 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. - -

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

19 (1) interview the inmate at the institution  
20 where he is committed;

21 (2) consider all pertinent information  
22 concerning the inmate, including:

23 (a) the circumstances of the offense;  
24 (b) mitigating and aggravating  
25 circumstances;

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1 (c) whether a deadly weapon was used in  
2 the commission of the offense;

3 (d) whether the inmate is a habitual  
4 offender;

5 (e) the reports filed under Section  
6 31-21-9 NMSA 1978; and

7 (f) the reports of such physical and  
8 mental examinations as have been made while in [~~prison~~] an  
9 institution;

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

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

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

20 B. An inmate of an institution who was sentenced  
21 to life imprisonment without possibility of release or parole  
22 as the result of the commission of a capital felony is not  
23 eligible for parole and shall remain incarcerated for the  
24 entirety of his natural life.

25 [~~B.~~] C. Unless the board finds that it is in the

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1 best interest of society and the parolee to reduce the period  
2 of parole, a person who was convicted of a capital felony  
3 shall be required to undergo a minimum period of parole of  
4 five years. During the period of parole, the person shall be  
5 under the guidance and supervision of the board.

6 ~~[C.]~~ D. 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.]~~ E. 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.] F. 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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1                    ~~[F-]~~ G. Pursuant to the provisions of Section  
2 31-18-15 NMSA 1978, the board shall require the inmate as a  
3 condition of parole:

4                    (1) to pay the actual costs of his parole  
5 services to the adult probation and parole division of the  
6 corrections department for deposit to the corrections  
7 department intensive supervision fund not exceeding one  
8 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 adult probation and parole division on the  
12 basis of changed financial circumstances; and

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

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

21                    Section 9. REPEAL. -- Sections 31-14-1 through 31-14-16  
22 and 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections  
23 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979,  
24 Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and  
25 4, Laws 1929, Chapter 69, Sections 12 and 13 and Laws 1979,

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1 Chapter 150, Section 7, as amended) are repealed.

2 Section 10. APPLICABILITY. -- The provisions of this act  
3 apply only to persons convicted of a capital felony offense  
4 committed on or after July 1, 2002. As to persons convicted  
5 of a capital felony offense committed prior to July 1, 2002,  
6 the laws with respect to capital felony offenses in effect at  
7 the time the offense was committed shall apply.

8 Section 11. EFFECTIVE DATE. -- The effective date of the  
9 provisions of this act is July 1, 2002.