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SENATE BILL 285

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

INTRODUCED BY

Steve Komadi na

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING FOR DEATH,  
LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF RELEASE OR PAROLE  
OR LIFE IMPRISONMENT; AMENDING 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,  
life imprisonment without the possibility of release or parole  
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

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1 he was convicted, he may be sentenced to life imprisonment or  
2 life imprisonment without the possibility of release or parole  
3 but shall not be punished by death.

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

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

13 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

21 B. Upon a verdict by the jury or judge that the  
22 defendant is guilty of a capital felony, or upon a plea of  
23 guilty to a capital felony, the court shall conduct a separate  
24 sentencing proceeding to determine whether the defendant  
25 should be sentenced to death, life imprisonment without the

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1 possibility of release or parole or life imprisonment [as  
2 ~~authorized herein~~]. In a jury trial, the sentencing  
3 proceeding shall be conducted as soon as practicable by the  
4 original trial judge before the original trial jury. In a  
5 nonjury trial, the sentencing proceeding shall be conducted as  
6 soon as practicable by the original trial judge. In the case  
7 of a plea of guilty to a capital felony, the sentencing  
8 proceeding shall be conducted as soon as practicable by the  
9 original trial judge or by a jury upon 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 pursuant  
14 to Sections [~~6 and 7 of this act~~] 31-20A-5 and 31-20A-6 NMSA  
15 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~~] 31-20A-5 NMSA 1978;

4 (2) whether mitigating circumstances exist as  
5 enumerated in Section [~~7 of this act~~] 31-20A-6 NMSA 1978; and

6 (3) whether other mitigating circumstances  
7 exist.

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, life imprisonment without the possibility  
13 of release or parole or life imprisonment. "

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

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

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

18 "31-20A-3. COURT SENTENCING.--In a jury sentencing  
19 proceeding in which the jury unanimously finds beyond a  
20 reasonable doubt and specifies at least one of the aggravating  
21 circumstances enumerated in Section [~~6 of this act~~] 31-20A-5  
22 NMSA 1978, and unanimously specifies the sentence of death  
23 pursuant to Section [~~3 of this act~~] 31-20A-2 NMSA 1978, the  
24 court shall sentence the defendant to death. [~~Where~~] When a  
25 sentence of death is not unanimously specified, or the jury

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

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

14 "31-20A-5. AGGRAVATING CIRCUMSTANCES.--The aggravating  
15 circumstances to be considered by the sentencing court or jury  
16 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are  
17 limited to the following:

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

21 B. the murder was committed with deliberate intent  
22 to kill in the commission of or attempt to commit [~~kidnaping~~]  
23 kidnapping, criminal sexual contact of a minor or criminal  
24 sexual penetration;

25 C. the murder was committed with the deliberate

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1 intent to kill by the defendant while attempting to escape  
2 from a penal institution of New Mexico;

3 D. while incarcerated in a penal institution in  
4 New Mexico, the defendant, with the deliberate intent to kill,  
5 murdered a person who was at the time incarcerated in or  
6 lawfully on the premises of a penal institution in New Mexico.  
7 As used in this subsection, "penal institution" includes  
8 facilities under the jurisdiction of the corrections [~~and~~  
9 ~~criminal rehabilitation~~] department and county and municipal  
10 jails;

11 E. while incarcerated in a penal institution in  
12 New Mexico, the defendant, with the deliberate intent to kill,  
13 murdered an employee of the corrections [~~and criminal~~  
14 ~~rehabilitation~~] department;

15 F. the capital felony was committed for hire [~~and~~]  
16 with the deliberate intent to kill;

17 G. the capital felony was murder, committed with  
18 the deliberate intent to kill, of a witness to a crime or any  
19 person likely to become a witness to a crime, for the purpose  
20 of preventing report of the crime or testimony in any criminal  
21 proceeding or for retaliation for the victim having testified  
22 in any criminal proceeding;

23 H. the defendant, with the deliberate intent to  
24 kill, murdered a child less than thirteen years of age;

25 I. the defendant, with the deliberate intent to

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1 kill, murdered a person because of that person's present or  
2 former status as a peace officer or employee of the  
3 corrections department;

4 J. the defendant, with the deliberate intent to  
5 kill, murdered two or more people in a single incident; and

6 K. the defendant, with the deliberate intent to  
7 kill, committed a murder in a heinous manner."

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

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

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

21 (1) interview the inmate at the institution  
22 where he is committed;

23 (2) consider all pertinent information  
24 concerning the inmate, including:

25 (a) the circumstances of the offense;

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- 1 (b) mitigating and aggravating  
2 circumstances;
- 3 (c) whether a deadly weapon was used in  
4 the commission of the offense;
- 5 (d) whether the inmate is a habitual  
6 offender;
- 7 (e) the reports filed under Section  
8 31-21-9 NMSA 1978; and
- 9 (f) the reports of such physical and  
10 mental examinations as have been made while in ~~[prison]~~ an  
11 institution;
- 12 (3) make a finding that a parole is in the  
13 best interest of society and the inmate; and
- 14 (4) make a finding that the inmate is able  
15 and willing to fulfill the obligations of a law-abiding  
16 citizen.

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

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

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1 entirety of his natural life.

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

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

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

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

24 [E.] F. When a person on parole has performed the  
25 obligations of his release for the period of parole provided

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1 in this section, the board shall make a final order of  
2 discharge and issue him a certificate of discharge.

3 ~~[F.]~~ G. Pursuant to the provisions of Section  
4 31-18-15 NMSA 1978, the board shall require the inmate as a  
5 condition of parole:

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

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

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

23 Section 8. APPLICABILITY. -- The provisions of this act  
24 apply only to persons convicted of a capital felony offense  
25 committed on or after July 1, 2002. As to persons convicted

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1 of a capital felony offense committed prior to July 1, 2002,  
2 the laws with respect to capital felony offenses in effect at  
3 the time the offense was committed shall apply.

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

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