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HOUSE BILL 42

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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 AND REPEALING 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 death,
2 be punished by a sentence of life imprisonment. [~~The life~~
3 ~~imprisonment sentence shall be subject to parole pursuant to~~
4 ~~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 NMSA
9 1978.

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

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

18 E. As used in the Criminal Sentencing Act:

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

24 (2) "violent felony" means:

25 (a) murder in the first or second

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1 degree, as provided in Section 30-2-1 NMSA 1978;

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

5 (c) kidnapping resulting in great bodily
6 harm inflicted upon the victim by his captor, as provided in
7 Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]

8 (d) criminal sexual penetration, as
9 provided in Subsection C or Paragraph (5) or (6) of Subsection
10 D of Section 30-9-11 NMSA 1978; [~~and~~] or

11 (e) robbery while armed with a deadly
12 weapon resulting in great bodily harm as provided in Section
13 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
14 1978. "

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

17 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
18 MANDATORY LIFE IMPRISONMENT--EXCEPTION. --

19 A. When a defendant is convicted of a second
20 violent sexual offense, and each violent sexual offense
21 conviction is part of a separate transaction or occurrence, and
22 at least the second violent sexual offense conviction is in New
23 Mexico, the defendant shall, in addition to the punishment
24 imposed for the second violent sexual offense conviction, be
25 punished by a sentence of life imprisonment. [~~The life~~

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1 ~~imprisonment sentence shall be subject to parole pursuant to~~
2 ~~the provisions of Section 31-21-10 NMSA 1978.~~

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

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

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

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

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

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

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

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

11 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

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

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

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

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

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

21 ~~B. Unless the board finds that it is in the best~~
22 ~~interest of society and the parolee to reduce the period of~~
23 ~~parole, a person who was convicted of a capital felony shall be~~
24 ~~required to undergo a minimum period of parole of five years.~~
25 ~~During the period of parole, the person shall be under the~~

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1 ~~guidance and supervision of the board]~~ is not eligible for
2 parole and shall remain incarcerated for the entirety of his
3 natural life.

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

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

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

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

23 [~~F.-~~] E. Pursuant to the provisions of Section
24 31-18-15 NMSA 1978, the board shall require the inmate as a
25 condition of parole:

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

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

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

18 Section 4. REPEAL. -- Section 31-18-14.1 NMSA 1978 (being
19 Laws 2001, Chapter 128, Section 1) is repealed.

20 Section 5. EFFECTIVE DATE. -- The effective date of the
21 provisions of this act is July 1, 2003.