

HOUSE BILL 773

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Daniel R. Foley

AN ACT

RELATING TO CRIMINAL LAW; IMPOSING A SENTENCE OF DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR A DEFENDANT WHO HAS BEEN CONVICTED OF TWO VIOLENT SEXUAL OFFENSES AGAINST VICTIMS WHO ARE LESS THAN THIRTEEN YEARS OF AGE.

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

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

"31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS-- MANDATORY SENTENCE OF DEATH OR LIFE IMPRISONMENT [~~EXCEPTION~~].--

A. When a defendant is convicted of a second violent sexual offense, and each violent sexual offense conviction is part of a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico, the defendant shall, in addition to the punishment

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

14 C. [~~The~~] A sentence of life imprisonment, death or
15 life imprisonment without the possibility of parole shall be
16 imposed after a sentencing hearing, separate from the trial or
17 guilty plea proceeding resulting in the second violent sexual
18 offense conviction, pursuant to the provisions of Section
19 31-18-26 NMSA 1978.

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

24 E. When a defendant has a felony conviction from
25 another state, the felony conviction shall be considered a

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1 violent sexual offense for the purposes of the Criminal
2 Sentencing Act if the crime would be considered a violent
3 sexual offense in New Mexico.

4 F. As used in the Criminal Sentencing Act, "violent
5 sexual offense" means:

6 (1) criminal sexual penetration in the first
7 degree, as provided in Subsection C of Section 30-9-11 NMSA
8 1978; or

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

12 Section 2. Section 31-18-26 NMSA 1978 (being Laws 1996,
13 Chapter 79, Section 2) is amended to read:

14 "31-18-26. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
15 SENTENCING PROCEDURE.--

16 A. The court shall conduct a separate sentencing
17 proceeding to determine any controverted question of fact
18 regarding whether ~~[the]~~ a defendant has been convicted of two
19 violent sexual offenses. Either party to the sentencing
20 proceeding may demand a jury sentencing proceeding.

21 B. A jury sentencing proceeding shall be conducted
22 as soon as practicable by the original trial judge before the
23 original trial jury. A nonjury sentencing proceeding shall be
24 conducted as soon as practicable by the original trial judge.
25 In the case of a plea of guilty, the sentencing proceeding

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1 shall be conducted as soon as practicable by the original trial
2 judge or by the original trial jury, upon demand of the
3 defendant.

4 C. In a jury sentencing proceeding, the judge shall
5 give appropriate instructions and allow arguments. In a
6 nonjury sentencing proceeding or upon a plea of guilty when the
7 defendant has not demanded a jury, the judge shall allow
8 arguments and determine the verdict.

9 D. If the jury or judge determines that the
10 defendant has been convicted of two violent sexual offenses
11 that require a sentence of death or life imprisonment without
12 the possibility of parole pursuant to Section 31-18-25 NMSA
13 1978, the sentencing proceeding shall continue pursuant to
14 Sections 3 through 6 of this 2007 act. In the sentencing
15 proceeding, all evidence admitted at the trial shall be
16 considered and additional evidence may be presented as to the
17 circumstances of the crime and as to any mitigating
18 circumstances pursuant to Section 5 of this 2007 act."

19 Section 3. A new section of the Criminal Sentencing Act
20 is enacted to read:

21 "[NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
22 DETERMINATION OF SENTENCE OF DEATH OR LIFE IMPRISONMENT WITHOUT
23 THE POSSIBILITY OF PAROLE.--

24 A. Sentencing deliberations for a defendant who has
25 been convicted of two violent sexual offenses that require a

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1 sentence of death or life imprisonment without the possibility
2 of parole pursuant to Section 31-18-25 NMSA 1978 shall be
3 guided by the following considerations:

4 (1) whether aggravating circumstances exist as
5 enumerated in Section 4 of this 2007 act;

6 (2) whether mitigating circumstances exist as
7 enumerated in Section 5 of this 2007 act; and

8 (3) whether other mitigating circumstances
9 exist.

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

16 Section 4. A new section of the Criminal Sentencing Act
17 is enacted to read:

18 "[NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
19 AGGRAVATING CIRCUMSTANCES.--The aggravating circumstances to be
20 considered by the sentencing court or the jury pursuant to the
21 provisions of Section 3 of this 2007 act are limited to the
22 following:

23 A. the defendant committed the crime while
24 committing or attempting to commit kidnapping, as provided in
25 Section 30-4-1 NMSA 1978;

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1 B. the defendant committed the crime with the
2 intent to inflict great bodily harm or great mental anguish to
3 the victim;

4 C. the defendant was a fugitive at the time of the
5 commission of the crime. As used in this subsection,
6 "fugitive" means an inmate who escapes from a New Mexico penal
7 institution in which the inmate is confined; and

8 D. the victim of the crime was less than ten years
9 of age at the time of the offense."

10 Section 5. A new section of the Criminal Sentencing Act
11 is enacted to read:

12 "[NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
13 MITIGATING CIRCUMSTANCES.--The mitigating circumstances to be
14 considered by the sentencing court or the jury pursuant to the
15 provisions of Section 3 of this 2007 act shall include the
16 following:

17 A. the defendant acted under duress or under the
18 domination of another person;

19 B. the defendant's capacity to appreciate the
20 criminality of the defendant's conduct or to conform the
21 defendant's conduct to the requirements of the law was
22 impaired;

23 C. the defendant was under the influence of mental
24 or emotional disturbance;

25 D. the defendant acted under circumstances that

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1 tended to justify, excuse or reduce the crime;

2 E. the defendant is likely to be rehabilitated;

3 F. the defendant cooperated with authorities; and

4 G. the defendant's age."

5 Section 6. A new section of the Criminal Sentencing Act
6 is enacted to read:

7 "[NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
8 COURT SENTENCING.--

9 A. The court shall sentence the defendant to death
10 in a jury sentencing proceeding in which the jury unanimously:

11 (1) finds beyond a reasonable doubt and
12 specifies that the defendant has been convicted of two violent
13 sexual offenses that require a sentence of death or life
14 imprisonment without the possibility of parole pursuant to
15 Section 31-18-25 NMSA 1978;

16 (2) finds beyond a reasonable doubt and
17 specifies at least one of the aggravating circumstances
18 enumerated in Section 4 of this 2007 act; and

19 (3) specifies the sentence of death pursuant
20 to Section 3 of this 2007 act.

21 B. Where a sentence of death is not unanimously
22 specified, or the jury does not make the required finding or
23 the jury is unable to reach a unanimous verdict, the court
24 shall sentence the defendant to life imprisonment without the
25 possibility of parole. In a nonjury sentencing proceeding and

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1 in cases involving a plea of guilty, where no jury has been
2 demanded, the judge shall determine and impose the sentence,
3 but the judge shall not impose the sentence of death except
4 upon a finding beyond a reasonable doubt and specification that
5 the defendant has been convicted of two violent sexual
6 offenses."

7 Section 7. A new section of the Criminal Sentencing Act
8 is enacted to read:

9 "[NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
10 REVIEW OF JUDGMENT AND SENTENCE OF DEATH.--

11 A. The judgment of conviction for two violent
12 sexual offenses and sentence of death imposed by Section 6 of
13 this 2007 act shall be automatically reviewed by the New Mexico
14 supreme court.

15 B. In addition to the other matters on appeal, the
16 supreme court shall rule on the validity of the death sentence.

17 C. The death penalty shall not be imposed if:

18 (1) the evidence does not support the finding
19 that the defendant has been convicted of two violent sexual
20 offenses that require a sentence of death or life imprisonment
21 without the possibility of parole pursuant to Section 31-18-25
22 NMSA 1978;

23 (2) the evidence supports a finding that the
24 mitigating circumstances outweigh the aggravating
25 circumstances;

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1 (3) the sentence of death was imposed under
2 the influence of passion, prejudice or any other arbitrary
3 factor; or

4 (4) the sentence of death is excessive or
5 disproportionate to the penalty imposed in similar cases,
6 considering both the crime and the defendant.

7 D. No error in the sentencing proceeding shall
8 result in the reversal of the conviction of a second violent
9 sexual offense. If the trial court is reversed on appeal
10 because of error only in the sentencing proceeding, the supreme
11 court shall remand solely for a new sentencing proceeding. The
12 new sentencing proceeding ordered and mandated shall apply only
13 to the issue of punishment.

14 E. In cases of remand for a new sentencing
15 proceeding, all exhibits and a transcript of all testimony and
16 other evidence admitted in the prior trial and sentencing
17 proceeding shall be admissible in the new sentencing proceeding
18 and:

19 (1) if the sentencing proceeding was before a
20 jury, a new jury shall be impaneled for the new sentencing
21 proceeding;

22 (2) if the sentencing proceeding was before a
23 judge, the original trial judge shall conduct the new
24 sentencing proceeding; or

25 (3) if the sentencing proceeding was before a

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1 judge and the original trial judge is unable or unavailable to
2 conduct a new sentencing proceeding, then another judge shall
3 be designated to conduct the new sentencing proceeding and the
4 parties are entitled to disqualify the new judge on the grounds
5 set forth in Section 38-3-9 NMSA 1978 before the newly
6 designated judge exercises any discretion."

7 Section 8. EFFECTIVE DATE.--The effective date of the
8 provisions of this act is July 1, 2007.

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