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HOUSE BILL 231

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

INTRODUCED BY

FRANK BIRD

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.