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SENATE BILL 742

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

INTRODUCED BY

PHILLIP J. MALOOF

AN ACT

RELATING TO CRIMINAL LAW; REQUIRING LIFE IMPRISONMENT FOR  
PERSONS HAVING TWO VIOLENT SEXUAL OFFENSE CONVICTIONS;  
ESTABLISHING SENTENCING PROCEDURES; AMENDING AND ENACTING  
SECTIONS OF THE CRIMINAL SENTENCING ACT; AMENDING A SECTION OF  
THE PROBATION AND PAROLE ACT.

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

Section 1. A new section of the Criminal Sentencing Act,  
Section 31-18-25 NMSA 1978, is enacted to read:

"31-18-25. [NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE  
CONVICTIONS--MANDATORY 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

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1 defendant shall, in addition to the punishment imposed for the  
2 second violent sexual offense conviction, be punished by a  
3 sentence of life imprisonment. The life imprisonment sentence  
4 shall be subject to parole pursuant to the provisions of Section  
5 31-21-10 NMSA 1978.

6 B. The sentence of life imprisonment shall be  
7 imposed after a sentencing hearing, separate from the trial or  
8 guilty plea proceeding resulting in the second violent sexual  
9 offense conviction, pursuant to the provisions of Section  
10 31-18-26 NMSA 1978.

11 C. For the purposes of this section, a violent  
12 sexual offense conviction incurred by a defendant before he  
13 reaches the age of eighteen shall not count as a violent sexual  
14 offense conviction.

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

20 E. As used in the Criminal Sentencing Act, "violent  
21 sexual offense" means criminal sexual penetration in the first  
22 or second degree, as provided in Subsection C or D of Section  
23 30-9-11 NMSA 1978. "

24 Section 2. A new section of the Criminal Sentencing Act,  
25 Section 31-18-26 NMSA 1978, is enacted to read:

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1           "31-18-26. [NEW MATERIAL] TWO VIOLENT SEXUAL OFFENSE  
2 CONVICTIONS--SENTENCING PROCEDURE. --

3           A. The court shall conduct a separate sentencing  
4 proceeding to determine any controverted question of fact  
5 regarding whether the defendant has been convicted of two  
6 violent sexual offenses. Either party to the sentencing  
7 proceeding may demand a jury sentencing proceeding.

8           B. A jury sentencing proceeding shall be conducted  
9 as soon as practicable by the original trial judge before the  
10 original trial jury. A nonjury sentencing proceeding shall be  
11 conducted as soon as practicable by the original trial judge.  
12 In the case of a plea of guilty, the sentencing proceeding shall  
13 be conducted as soon as practicable by the original trial judge  
14 or by the original trial jury, upon demand of the defendant.

15           C. In a jury sentencing proceeding, the judge shall  
16 give appropriate instructions and allow arguments. In a nonjury  
17 sentencing proceeding, or upon a plea of guilty when the  
18 defendant has not demanded a jury, the judge shall allow  
19 arguments and determine the verdict. "

20           Section 3. Section 31-18-23 NMSA 1978 (being Laws 1994,  
21 Chapter 24, Section 2) is amended to read:

22           "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
23 LIFE IMPRISONMENT--EXCEPTION. --

24           A. When a defendant is convicted of a third violent  
25 felony, and each violent felony conviction is part of a separate

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1 transaction or occurrence, and at least the third violent felony  
2 conviction is in New Mexico, the defendant shall, in addition to  
3 the [~~punishment~~] sentence imposed for the third violent  
4 conviction [~~and~~] when that sentence does not result in death, be  
5 punished by a sentence of life imprisonment. The life  
6 imprisonment sentence shall be subject to parole pursuant to the  
7 provisions of Section 31-21-10 NMSA 1978.

8 B. The sentence of life imprisonment shall be  
9 imposed after a sentencing hearing, separate from the trial or  
10 guilty plea proceeding resulting in the third violent felony  
11 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
12 1978.

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

16 D. When a defendant has a felony conviction from  
17 another state, the felony conviction shall be considered a  
18 violent felony for the purposes of the Criminal Sentencing Act  
19 if that crime would be considered a violent felony in New  
20 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~~] kidnapping resulting in  
9 great bodily harm inflicted upon the victim by his captor, as  
10 provided in 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~~)] (d) robbery while armed with a  
15 deadly weapon resulting in great bodily harm as provided in  
16 Section 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12  
17 [~~(A)~~] NMSA 1978. "

18 Section 4. Section 31-21-10 NMSA 1978 (being Laws 1980,  
19 Chapter 28, Section 1, as amended by Laws 1994, Chapter 21,  
20 Section 1 and also by Laws 1994, Chapter 24, Section 4) is  
21 amended to read:

22 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

23 A. An inmate of an institution who was sentenced to  
24 life imprisonment as the result of the commission of a capital  
25 felony, [~~or~~] who was convicted of three violent felonies and

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1 sentenced pursuant to ~~[Section]~~ Sections 31-18-23 and 31-18-24  
2 NMSA 1978 or who was convicted of two violent sexual offenses  
3 and sentenced pursuant to Sections 31-18-25 and 31-18-26 NMSA  
4 1978 becomes eligible for a parole hearing after he has served  
5 thirty years of his sentence. Before ordering the parole of an  
6 inmate sentenced to life imprisonment, the board shall:

7 (1) interview the inmate at the institution  
8 where he is committed;

9 (2) consider all pertinent information  
10 concerning the inmate, including:

11 (a) the circumstances of the offense;

12 (b) mitigating and aggravating  
13 circumstances;

14 (c) whether a deadly weapon was used in  
15 the commission of the offense;

16 (d) whether the inmate is a habitual  
17 offender;

18 (e) the reports filed under Section  
19 31-21-9 NMSA 1978; and

20 (f) the reports of such physical and  
21 mental examinations as have been made while in prison;

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

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

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

6           B. Unless the board finds that it is in the best  
7 interest of society and the parolee to reduce the period of  
8 parole, a person who was convicted of a capital felony shall be  
9 required to undergo a minimum period of parole of five years.  
10 During the period of parole, the person shall be under the  
11 guidance and supervision of the board.

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

23           D. Every person while on parole shall remain in the  
24 legal custody of the institution from which he was released, but  
25 shall be subject to the orders of the board. The board shall

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

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1           E. When a person on parole has performed the  
2 obligations of his release for the period of parole provided in  
3 this section, the board shall make a final order of discharge  
4 and issue him a certificate of discharge.

5           F. Pursuant to the provisions of Section 31-18-15  
6 NMSA 1978, the board shall require the inmate as a condition of  
7 parole:

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

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

22           G. The provisions of this section shall apply to all  
23 inmates except geriatric, permanently incapacitated and  
24 terminally ill inmates eligible for the medical and geriatric  
25 parole program as provided by the Parole Board Act. "

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Section 5. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1996.

- 10 -

1 FORTY- SECOND LEGI SLATURE  
2 SECOND SESSI ON, 1996

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5 FEBRUARY 3, 1996

6  
7 Mr. Presi dent:

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9 Your COMMI TTEES' COMMI TTEE, to whom has been referred

10  
11 SENATE BILL 742

12  
13 has had it under consideration and finds same to be GERMANE, PURSUNAT  
14 TO SENATE EXECUTIVE MESSAGE NUMBER TWENTY FIVE, and thence referred to  
15 the JUDI CI ARY COMMI TTEE.

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17 Respectfully submi tted,

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23 SENATOR MANNY M. ARAGON, Chai rman  
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Adopted \_\_\_\_\_

Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

S0742CC1

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~~[bracketed material] = delete~~

1 FORTY-SECOND LEGISLATURE  
2 SECOND SESSION, 1996

SB 742/a

5 February 9, 1996

7 Mr. President:

9 Your JUDICIARY COMMITTEE, to whom has been referred

11 SENATE BILL 742

13 has had it under consideration and reports same WITHOUT  
14 RECOMMENDATION, amended as follows:

16 1. On page 5, lines 11 through 14, strike the brackets and line-  
17 through in their entirety.

19 2. Reletter the succeeding subparagraph accordingly.

21 3. On page 5, line 12, strike "Paragraph (4) or (5)" and insert in  
22 lieu thereof "Paragraph (5) or (6)",

24 and thence referred to the FINANCE COMMITTEE.

25 Respectfully submitted,

**FORTY-SECOND LEGISLATURE  
SECOND SESSION, 1996**

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Janice D. Paster, Chairman

Adopted \_\_\_\_\_  
(Chief Clerk)

Not Adopted \_\_\_\_\_  
(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Carraro, Sanchez, Scott

Absent: None

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[bracketed material] = delete

# **State of New Mexico House of Representatives**

**FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996**

**February 13, 1996**

**Mr. Speaker:**

**Your JUDICIARY COMMITTEE, to whom has been referred  
SENATE BILL 742, as amended  
has had it under consideration and reports same with  
recommendation that it DO PASS.**

**Respectfully submitted,**

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**Cisco McSorley, Chairman**

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FORTY- SECOND LEGISLATURE  
SECOND SESSION, 1996

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Larranaga, Sanchez, R. G. , Stewart

Absent: None

S0742JC1

Underscored material = new  
~~[bracketed material] = delete~~