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HOUSE BILL 305

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Gail C. Beam

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-18-14 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 [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 he was convicted, he may be sentenced to life imprisonment but shall not be punished by death.]~~

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~~B. In the event the death penalty in a capital felony case is held to be unconstitutional or otherwise invalidated by the supreme court of the state of New Mexico or the supreme court of the United States, the person previously sentenced to death for a capital felony shall be sentenced to life imprisonment]. "~~

Section 2. REPEAL. -- Sections 31-14-1 through 31-14-16 NMSA 1978 and Sections 31-20A-1 through 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13, Laws 1979, Chapter 150, Sections 2 and 3, Laws 1991, Chapter 30, Section 1 and Laws 1979, Chapter 150, Sections 4 through 7, as amended) are repealed.

Section 3. APPLICABILITY. -- The provisions of this act apply only to persons convicted of a capital felony offense committed on or after July 1, 1999. As to persons convicted of a capital felony offense committed prior to July 1, 1999, the laws with respect to capital felony offenses in effect at the time the offense was committed shall apply.

Section 4. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1999.

1 FORTY- FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 24, 1999
7

8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been
11 referred
12

13 HOUSE BILL 305
14

15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
18 HOUSE BILL 305
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20 DO PASS.
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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 5 Against
Yes: 6
No: Godbey, Mallory, T. Taylor, Thompson, Vaughn
Excused: Luna
Absent: None

G: \BILLTEXT\BILLW_99\H0305

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 305

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; ABOLISHING THE DEATH PENALTY; PROVIDING FOR LIFE IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 31-18-14 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 [~~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 he was convicted, he may be sentenced to life imprisonment but shall not be punished by death.

~~B. In the event the death penalty in a capital~~

1 ~~felony case is held to be unconstitutional or otherwise~~
2 ~~invalidated by the supreme court of the state of New Mexico or~~
3 ~~the supreme court of the United States, the person previously~~
4 ~~sentenced to death for a capital felony shall be sentenced to~~
5 ~~life imprisonment] or life imprisonment without possibility of~~
6 ~~release or parole."~~

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

9 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

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

17 B. Upon a verdict by the jury or judge that the
18 defendant is guilty of a capital felony, or upon a plea of
19 guilty to a capital felony, the court shall conduct a separate
20 sentencing proceeding to determine whether the defendant
21 should be sentenced to ~~[death or]~~ life imprisonment or life
22 imprisonment without possibility of release or parole as
23 authorized herein. In a jury trial, the sentencing proceeding
24 shall be conducted as soon as practicable by the original
25 trial judge before the original trial jury. In a nonjury
trial, the sentencing proceeding shall be conducted as soon as
practicable by the original trial judge. In the case of a
plea of guilty to a capital felony, the sentencing proceeding

1 shall be conducted as soon as practicable by the original
2 trial judge or by a jury upon demand of a party.

3 C. In the sentencing proceeding, all evidence
4 admitted at the trial shall be considered, and additional
5 evidence may be presented as to the circumstances of the crime
6 and as to any aggravating [~~or mitigating circumstances~~
7 ~~pursuant to Sections 6 and 7 of this act~~] circumstances
8 pursuant to the provisions of Section 31-20A-5 NMSA 1978.

9 D. In a jury sentencing proceeding, the judge
10 shall give appropriate instructions and allow argument, and
11 the jury shall retire to determine the punishment to be
12 imposed. In a nonjury sentencing proceeding, or upon a plea
13 of guilty, where no jury has been demanded, the judge shall
14 allow argument and determine the punishment to be imposed."

15 Section 3. Section 31-20A-2 NMSA 1978 (being Laws 1979,
16 Chapter 150, Section 3) is amended to read:

17 "31-20A-2. DETERMINATION OF SENTENCE. --

18 A. Capital sentencing deliberations shall be
19 guided by [~~the following considerations:~~

20 (1) whether aggravating circumstances exist
21 as enumerated in Section [~~6 of this act;~~

22 (2) ~~whether mitigating circumstances exist as~~
23 ~~enumerated in Section 7 of this act; and~~

24 (3) ~~whether other mitigating circumstances~~
25 ~~exist]~~ 31-20A-5 NMSA 1978.

26 B. After weighing the aggravating circumstances
27 and [~~the mitigating circumstances, weighing them against each~~
28 ~~other, and]~~ considering both the defendant and the crime, the

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1 jury or judge shall determine whether the defendant should be
2 sentenced to [~~death or~~] life imprisonment or life imprisonment
3 without possibility of release or parole. "

4 Section 4. Section 31-20A-2.1 NMSA 1978 (being Laws
5 1991, Chapter 30, Section 1) is amended to read:

6 "31-20A-2.1. [~~PROHIBITION AGAINST~~] CAPITAL PUNISHMENT OF
7 MENTALLY RETARDED PERSONS--PRESENTENCING HEARING. --

8 A. As used in this section, "mentally retarded"
9 means significantly subaverage general intellectual
10 functioning existing concurrently with deficits in adaptive
11 behavior. An intelligence quotient of seventy or below on a
12 reliably administered intelligence quotient test shall be
13 presumptive evidence of mental retardation.

14 B. The penalty of [~~death~~] life imprisonment
15 without possibility of release or parole shall not be imposed
16 on any person who is mentally retarded.

17 C. Upon motion of the defense requesting a ruling
18 that the penalty of [~~death~~] life imprisonment without
19 possibility of release or parole be precluded under this
20 section, the court shall hold a hearing, prior to conducting
21 the sentencing proceeding under Section 31-20A-3 NMSA 1978.
22 If the court finds, by a preponderance of the evidence, that
23 the defendant is mentally retarded, it shall sentence the
24 defendant to life imprisonment. A ruling by the court that
25 evidence of diminished intelligence introduced by the
26 defendant does not preclude the [~~death~~] penalty of life
27 imprisonment without possibility of release or parole under
28 this section shall not restrict the defendant's opportunity to

1 introduce such evidence at the sentencing proceeding or to
 2 argue that that evidence should be given mitigating
 3 significance. If the sentencing proceeding is conducted
 4 before a jury, the jury shall not be informed of any ruling
 5 denying a defendant's motion under this section. "

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

8 "31-20A-3. COURT SENTENCING. -- In a jury sentencing
 9 proceeding in which the jury unanimously finds beyond a
 10 reasonable doubt and specifies at least one of the aggravating
 11 circumstances enumerated in Section [~~6 of this act and~~
 12 ~~unanimously specifies the sentence of death pursuant to~~
 13 ~~Section 3 of this act]~~ 31-20A-5 NMSA 1978, the court shall
 14 sentence the defendant to [~~death]~~ life imprisonment without
 15 possibility of release or parole. Where a sentence of [~~death]~~
 16 life imprisonment without possibility of release or parole is
 17 not unanimously specified, or the jury does not make the
 18 required finding, or the jury is unable to reach a unanimous
 19 verdict, the court shall sentence the defendant to life
 20 imprisonment. In a nonjury sentencing proceeding and in cases
 21 involving a plea of guilty, where no jury has been demanded,
 22 the judge shall determine and impose the sentence, but he
 23 shall not impose the sentence of [~~death]~~ life imprisonment
 24 without possibility of release or parole except upon a finding
 25 beyond a reasonable doubt and specification of at least one of
 the aggravating circumstances enumerated in Section [~~6 of this~~
~~act]~~ 31-20A-5 NMSA 1978. "

Section 6. Section 31-20A-4 NMSA 1978 (being Laws 1979,

1 Chapter 150, Section 5) is amended to read:

2 "31-20A-4. REVIEW OF JUDGMENT AND SENTENCE. --

3 A. The judgment of conviction and sentence of
4 ~~[death]~~ life imprisonment without possibility of release or
5 parole shall be automatically reviewed by the supreme court of
6 the state of New Mexico.

7 B. In addition to the other matters on appeal, the
8 supreme court shall rule on the validity of the ~~[death]~~
9 sentence of life imprisonment without possibility of release
10 or parole.

11 C. The ~~[death]~~ penalty of life imprisonment
12 without possibility of release or parole shall not be imposed
13 if:

14 (1) the evidence does not support the finding
15 of a statutory aggravating circumstance;

16 ~~[(2) the evidence supports a finding that the~~
17 ~~mitigating circumstances outweigh the aggravating~~
18 ~~circumstances;~~

19 ~~(3)]~~ (2) the sentence of ~~[death]~~ life
20 imprisonment without possibility of release or parole was
21 imposed under the influence of passion, prejudice or any other
22 arbitrary factor; or

23 ~~[(4)]~~ (3) the sentence of ~~[death]~~ life
24 imprisonment without possibility of release or parole is
25 excessive or disproportionate to the penalty imposed in
similar cases, considering both the crime and the defendant.

D. No error in the sentencing proceeding shall
result in the reversal of the conviction of a capital felony.

1 If the trial court is reversed on appeal because of error only
2 in the sentencing proceeding, the supreme court shall remand
3 solely for a new sentencing proceeding. The new sentencing
4 proceeding ordered and mandated shall apply only to the issue
5 of punishment.

6 E. In cases of remand for a new sentencing
7 proceeding, all exhibits and a transcript of all testimony and
8 other evidence admitted in the prior trial and sentencing
9 proceeding shall be admissible in the new sentencing
10 proceeding, and:

11 (1) if the sentencing proceeding was before a
12 jury, a new jury shall be impaneled for the new sentencing
13 proceeding;

14 (2) if the sentencing proceeding was before a
15 judge, the original trial judge shall conduct the new
16 sentencing proceeding; or

17 (3) if the sentencing proceeding was before a
18 judge and the original trial judge is unable or unavailable to
19 conduct a new sentencing proceeding, then another judge shall
20 be designated to conduct the new sentencing proceeding, and
21 the parties are entitled to disqualify the new judge on the
22 grounds set forth in Section 38-3-9 NMSA 1978 before the newly
23 designated judge exercises any discretion. "

24 Section 7. Section 31-20A-5 NMSA 1978 (being Laws 1979,
25 Chapter 150, Section 6, as amended) is amended to read:

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

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1 limited to the following:

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

5 B. the murder was committed with the deliberate
6 intent to kill in the commission of or attempt to commit
7 ~~[kidnaping]~~ kidnapping, criminal sexual contact of a minor or
8 criminal sexual penetration;

9 C. the murder was committed with the deliberate
10 intent to kill by the defendant while attempting to escape
11 from a penal institution of New Mexico;

12 D. while incarcerated in a penal institution in
13 New Mexico, the defendant, with the deliberate intent to kill,
14 murdered a person who was at the time incarcerated in or
15 lawfully on the premises of a penal institution in New Mexico.
16 As used in this subsection, "penal institution" includes
17 facilities under the jurisdiction of the corrections [~~and~~
18 ~~criminal rehabilitation~~] department and county and municipal
19 jails;

20 E. while incarcerated in a penal institution in
21 New Mexico, the defendant, with the deliberate intent to kill,
22 murdered an employee of the corrections [~~and criminal~~
23 ~~rehabilitation~~] department;

24 F. the capital felony, with the deliberate intent
25 to kill, was committed for hire; and

G. the capital felony, with the deliberate intent
to kill, was murder of a witness to a crime or any person
likely to become a witness to a crime, for the purpose of

1 preventing report of the crime or testimony in any criminal
2 proceeding or for retaliation for the victim having testified
3 in any criminal proceeding. "

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

6 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

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

17 (1) interview the inmate at the institution
18 where he is committed;

19 (2) consider all pertinent information
20 concerning the inmate, including:

- 21 (a) the circumstances of the offense;
- 22 (b) mitigating and aggravating
23 circumstances;
- 24 (c) whether a deadly weapon was used in
25 the commission of the offense;
- (d) whether the inmate is a habitual
offender;
- (e) the reports filed under Section

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1 31-21-9 NMSA 1978; and

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

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

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

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

14 B. An inmate of an institution who was sentenced
15 to life imprisonment without possibility of release or parole
16 as the result of the commission of a capital felony is not
17 eligible for parole and shall remain incarcerated for the
18 entirety of his natural life.

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

25 [~~C.~~] D. An inmate who was convicted of a first,
second or third degree felony and who has served the sentence
of imprisonment imposed by the court in a corrections facility
designated by the corrections department shall be required to

1 undergo a two-year period of parole. An inmate who was
 2 convicted of a fourth degree felony and who has served the
 3 sentence of imprisonment imposed by the court in a corrections
 4 facility designated by the corrections department shall be
 5 required to undergo a one-year period of parole. During the
 6 period of parole, the person shall be under the guidance and
 supervision of the board.

7 ~~[D.]~~ E. Every person while on parole shall remain
 8 in the legal custody of the institution from which he was
 9 released, but shall be subject to the orders of the board.
 10 The board shall furnish to each inmate as a prerequisite to
 11 his release under its supervision a written statement of the
 12 conditions of parole that shall be accepted and agreed to by
 13 the inmate as evidenced by his signature affixed to a
 14 duplicate copy to be retained in the files of the board. The
 15 board shall also require as a prerequisite to release the
 16 submission and approval of a parole plan. If an inmate
 17 refuses to affix his signature to the written statement of the
 18 conditions of his parole or does not have an approved parole
 19 plan, he shall not be released and shall remain in the custody
 20 of the corrections facility in which he has served his
 21 sentence, excepting parole, until such time as the period of
 22 parole he was required to serve, less meritorious deductions,
 23 if any, expires, at which time he shall be released from that
 24 facility without parole, or until such time that he evidences
 25 his acceptance and agreement to the conditions of parole as
 required or receives approval for his parole plan or both.
 Time served from the date that an inmate refuses to accept and

1 agree to the conditions of parole or fails to receive approval
2 for his parole plan shall reduce the period, if any, to be
3 served under parole at a later date. If the district court
4 has ordered that the inmate make restitution to a victim as
5 provided in Section 31-17-1 NMSA 1978, the board shall include
6 restitution as a condition of parole. The board shall also
7 personally apprise the inmate of the conditions of parole and
8 his duties relating thereto.

9 ~~[E.]~~ F. When a person on parole has performed the
10 obligations of his release for the period of parole provided
11 in this section, the board shall make a final order of
12 discharge and issue him a certificate of discharge.

13 ~~[F.]~~ G. Pursuant to the provisions of Section
14 31-18-15 NMSA 1978, the board shall require the inmate as a
15 condition of parole:

16 (1) to pay the actual costs of his parole
17 services to the adult probation and parole division of the
18 corrections department for deposit to the corrections
19 department intensive supervision fund not exceeding one
20 thousand twenty dollars (\$1,020) annually to be paid in
21 monthly installments of not less than fifteen dollars (\$15.00)
22 and not more than eighty-five dollars (\$85.00), subject to
23 modification by the adult probation and parole division on the
24 basis of changed financial circumstances; and

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

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

Section 9. REPEAL. -- Sections 31-14-1 through 31-14-16 and 31-20A-6 NMSA 1978 (being Laws 1929, Chapter 69, Sections 1 through 10, Laws 1955, Chapter 127, Section 1, Laws 1979, Chapter 150, Section 9, Laws 1955, Chapter 127, Sections 3 and 4, Laws 1929, Chapter 69, Sections 12 and 13 and Laws 1979, Chapter 150, Section 7, as amended) are repealed.

Section 10. APPLICABILITY. -- The provisions of this act apply only to persons convicted of a capital felony offense committed on or after July 1, 1999. As to persons convicted of a capital felony offense committed prior to July 1, 1999, the laws with respect to capital felony offenses in effect at the time the offense was committed shall apply.

Section 11. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1999.