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SENATE BILL 75

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Cisco McSorley

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; REMOVING THE MANDATORY PAROLE
PROVISION FOR PERSONS SENTENCED TO ONE YEAR OR LESS IN PRISON;
PROHIBITING THE IMPOSITION OF PAROLE IN CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977,
Chapter 216, Section 4, as amended) is amended to read:

"31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
DEDUCTIONS.--

A. If a person is convicted of a noncapital felony,
the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the
death of a child, life imprisonment;

(2) for a first degree felony for aggravated

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1 criminal sexual penetration, life imprisonment;

2 (3) for a first degree felony, eighteen years
3 imprisonment;

4 (4) for a second degree felony resulting in
5 the death of a human being, fifteen years imprisonment;

6 (5) for a second degree felony for a sexual
7 offense against a child, fifteen years imprisonment;

8 (6) for a second degree felony for sexual
9 exploitation of children, twelve years imprisonment;

10 (7) for a second degree felony, nine years
11 imprisonment;

12 (8) for a third degree felony resulting in the
13 death of a human being, six years imprisonment;

14 (9) for a third degree felony for a sexual
15 offense against a child, six years imprisonment;

16 (10) for a third degree felony for sexual
17 exploitation of children, eleven years imprisonment;

18 (11) for a third degree felony, three years
19 imprisonment;

20 (12) for a fourth degree felony for sexual
21 exploitation of children, ten years imprisonment; or

22 (13) for a fourth degree felony, eighteen
23 months imprisonment.

24 B. The appropriate basic sentence of imprisonment
25 shall be imposed upon a person convicted and sentenced pursuant

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1 to Subsection A of this section, unless the court alters the
2 sentence pursuant to the provisions of the Criminal Sentencing
3 Act.

4 C. A period of parole shall be imposed only for
5 felony convictions wherein a person is sentenced to
6 imprisonment of more than one year, unless the parties to a
7 proceeding agree that a period of parole should be imposed. If
8 a period of parole is imposed, the court shall include in the
9 judgment and sentence of each person convicted and sentenced to
10 imprisonment in a corrections facility designated by the
11 corrections department authority for a period of parole to be
12 served in accordance with the provisions of Section 31-21-10
13 NMSA 1978 after the completion of any actual time of
14 imprisonment and authority to require, as a condition of
15 parole, the payment of the costs of parole services and
16 reimbursement to a law enforcement agency or local crime
17 stopper program in accordance with the provisions of that
18 section. If imposed, the period of parole shall be deemed to
19 be part of the sentence of the convicted person in addition to
20 the basic sentence imposed pursuant to Subsection A of this
21 section together with alterations, if any, pursuant to the
22 provisions of the Criminal Sentencing Act.

23 D. When a court imposes a sentence of imprisonment
24 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
25 31-18-17 NMSA 1978 and suspends or defers the basic sentence of

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1 imprisonment provided pursuant to the provisions of Subsection
2 A of this section, the period of parole shall be served in
3 accordance with the provisions of Section 31-21-10 NMSA 1978
4 for the degree of felony for the basic sentence for which the
5 inmate was convicted. For the purpose of designating a period
6 of parole, a court shall not consider that the basic sentence
7 of imprisonment was suspended or deferred and that the inmate
8 served a period of imprisonment pursuant to the provisions of
9 the Criminal Sentencing Act.

10 E. The court may, in addition to the imposition of
11 a basic sentence of imprisonment, impose a fine not to exceed:

12 (1) for a first degree felony resulting in the
13 death of a child, seventeen thousand five hundred dollars
14 (\$17,500);

15 (2) for a first degree felony for aggravated
16 criminal sexual penetration, seventeen thousand five hundred
17 dollars (\$17,500);

18 (3) for a first degree felony, fifteen
19 thousand dollars (\$15,000);

20 (4) for a second degree felony resulting in
21 the death of a human being, twelve thousand five hundred
22 dollars (\$12,500);

23 (5) for a second degree felony for a sexual
24 offense against a child, twelve thousand five hundred dollars
25 (\$12,500);

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- 1 (6) for a second degree felony for sexual
2 exploitation of children, five thousand dollars (\$5,000);
3 (7) for a second degree felony, ten thousand
4 dollars (\$10,000);
5 (8) for a third degree felony resulting in the
6 death of a human being, five thousand dollars (\$5,000);
7 (9) for a third degree felony for a sexual
8 offense against a child, five thousand dollars (\$5,000);
9 (10) for a third degree felony for sexual
10 exploitation of children, five thousand dollars (\$5,000);
11 (11) for a third or fourth degree felony, five
12 thousand dollars (\$5,000); or
13 (12) for a fourth degree felony for sexual
14 exploitation of children, five thousand dollars (\$5,000).

15 F. When the court imposes a sentence of
16 imprisonment for a felony offense, the court shall indicate
17 whether or not the offense is a serious violent offense, as
18 defined in Section 33-2-34 NMSA 1978. The court shall inform
19 an offender that the offender's sentence of imprisonment is
20 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
21 and 33-2-38 NMSA 1978. If the court fails to inform an
22 offender that the offender's sentence is subject to those
23 provisions or if the court provides the offender with erroneous
24 information regarding those provisions, the failure to inform
25 or the error shall not provide a basis for a writ of habeas

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1 corpus.

2 G. No later than October 31 of each year, the
3 New Mexico sentencing commission shall provide a written report
4 to the secretary of corrections, all New Mexico criminal court
5 judges, the administrative office of the district attorneys and
6 the chief public defender. The report shall specify the
7 average reduction in the sentence of imprisonment for serious
8 violent offenses and nonviolent offenses, as defined in Section
9 33-2-34 NMSA 1978, due to meritorious deductions earned by
10 prisoners during the previous fiscal year pursuant to the
11 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
12 NMSA 1978. The corrections department shall allow the
13 commission access to documents used by the department to
14 determine earned meritorious deductions for prisoners."

15 SECTION 2. Section 31-21-10 NMSA 1978 (being Laws 1980,
16 Chapter 28, Section 1, as amended) is amended to read:

17 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

18 A. An inmate of an institution who was sentenced to
19 life imprisonment becomes eligible for a parole hearing after
20 the inmate has served thirty years of the sentence. Before
21 ordering the parole of an inmate sentenced to life
22 imprisonment, the board shall:

- 23 (1) interview the inmate at the institution
24 where the inmate is committed;
25 (2) consider all pertinent information

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1 concerning the inmate, including:

2 (a) the circumstances of the offense;

3 (b) mitigating and aggravating
4 circumstances;

5 (c) whether a deadly weapon was used in
6 the commission of the offense;

7 (d) whether the inmate is [~~a~~] an
8 habitual offender;

9 (e) the reports filed under Section
10 31-21-9 NMSA 1978; and

11 (f) the reports of such physical and
12 mental examinations as have been made while in an institution;

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

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

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

22 B. Unless the board finds that it is in the best
23 interest of society and the parolee to reduce the period of
24 parole, a person who was sentenced to life imprisonment shall
25 be required to undergo a minimum period of parole of five

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1 years. During the period of parole, the person shall be under
2 the guidance and supervision of the board.

3 C. An inmate of an institution who was sentenced to
4 life imprisonment without possibility of release or parole is
5 not eligible for parole and shall remain incarcerated for the
6 entirety of the inmate's natural life.

7 D. Except for certain sex offenders as provided in
8 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a
9 first, second or third degree felony and who has served the
10 sentence of imprisonment imposed by the court in an institution
11 designated by the corrections department that exceeds one year
12 or has agreed and been ordered to serve a period of parole by
13 the court shall be required to undergo a two-year period of
14 parole. An inmate who was convicted of a fourth degree felony
15 and who has served ~~[the]~~ a sentence of imprisonment imposed by
16 the court in an institution designated by the corrections
17 department that exceeds one year or has agreed and been ordered
18 to serve a period of parole by the court shall be required to
19 undergo a one-year period of parole. During the period of
20 parole, the person shall be under the guidance and supervision
21 of the board.

22 E. Every person while on parole shall remain in the
23 legal custody of the institution from which the person was
24 released but shall be subject to the orders of the board. The
25 board shall furnish to each inmate as a prerequisite to release

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

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1 inmate's duties relating thereto.

2 F. When a person on parole has performed the
3 obligations of the person's release for the period of parole
4 provided in this section, the board shall make a final order of
5 discharge and issue the person a certificate of discharge.

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

9 (1) to pay the actual costs of parole services
10 to the adult probation and parole division of the corrections
11 department for deposit to the corrections department intensive
12 supervision fund not exceeding one thousand eight hundred
13 dollars (\$1,800) annually to be paid in monthly installments of
14 not less than twenty-five dollars (\$25.00) and not more than
15 one hundred fifty dollars (\$150), as set by the appropriate
16 district supervisor of the adult probation and parole division,
17 based upon the financial circumstances of the defendant. The
18 defendant's payment of the supervised parole costs shall not be
19 waived unless the board holds an evidentiary hearing and finds
20 that the defendant is unable to pay the costs. If the board
21 waives the defendant's payment of the supervised parole costs
22 and the defendant's financial circumstances subsequently change
23 so that the defendant is able to pay the costs, the appropriate
24 district supervisor of the adult probation and parole division
25 shall advise the board and the board shall hold an evidentiary

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1 hearing to determine whether the waiver should be rescinded;
2 and

3 (2) to reimburse a law enforcement agency or
4 local crime stopper program for the amount of any reward paid
5 by the agency or program for information leading to the
6 inmate's arrest, prosecution or conviction.

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

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2019.