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HOUSE BILL 58

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING ADDITIONAL VIOLENT  
FELONIES IN THE CRIMINAL SENTENCING ACT FOR THE PURPOSES OF  
LIFE IMPRISONMENT FOR THREE VIOLENT FELONY CONVICTIONS;  
ELIMINATING THE POSSIBILITY OF PAROLE, EXCEPT GERIATRIC OR  
MEDICAL PAROLE, FOR A DEFENDANT CONVICTED OF A THIRD VIOLENT  
FELONY AND SENTENCED TO LIFE IMPRISONMENT; PROVIDING THAT  
CERTAIN CONVICTIONS INCURRED BY A DEFENDANT BEFORE THE AGE OF  
EIGHTEEN SHALL CONSTITUTE VIOLENT FELONIES; PROVIDING  
PENALTIES.

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, as amended) is amended to read:

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

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1           A. When a defendant is convicted of a third violent  
2 felony, and each violent felony conviction is part of a  
3 separate transaction or occurrence, and at least the third  
4 violent felony conviction is in New Mexico, the defendant  
5 shall, in addition to the sentence imposed for the third  
6 violent felony conviction, be punished by a sentence of life  
7 imprisonment. Except for geriatric or medical parole as  
8 provided in Section 31-21-25.1 NMSA 1978, the life imprisonment  
9 sentence shall not be subject to parole [~~pursuant to the~~  
10 ~~provisions of Section 31-21-10 NMSA 1978~~].

11           B. The sentence of life imprisonment shall be  
12 imposed after a sentencing hearing, separate from the trial or  
13 guilty plea proceeding resulting in the third violent felony  
14 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
15 1978.

16           C. For the purpose of this section, a violent  
17 felony conviction incurred by a defendant before the defendant  
18 reaches the age of eighteen shall not count as a violent felony  
19 conviction, unless:

20                   (1) the defendant was sentenced as an adult  
21 pursuant to the provisions of Section 31-18-15.3 or 32A-2-20  
22 NMSA 1978; or

23                   (2) in the case of a violent felony conviction  
24 from another state, the defendant was sentenced as an adult  
25 pursuant to the laws of that state.

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1           D. When a defendant has a felony conviction from  
2 another state, the felony conviction shall be considered a  
3 violent felony for the purposes of the Criminal Sentencing Act  
4 if that crime would be considered a violent felony in New  
5 Mexico.

6           E. As used in the Criminal Sentencing Act:

7                   (1) "great bodily harm" means an injury to the  
8 person that creates a high probability of death or that causes  
9 serious disfigurement or that results in permanent loss or  
10 impairment of the function of any member or organ of the body;  
11 and

12                   (2) "violent felony" means:

13                           (a) murder in the first or second  
14 degree, as provided in Section 30-2-1 NMSA 1978;

15                           **(b) voluntary manslaughter, as provided**  
16 **in Subsection A of Section 30-2-3 NMSA 1978;**

17                           **(c) involuntary manslaughter, as**  
18 **provided in Subsection B of Section 30-2-3 NMSA 1978;**

19                           **(d) aggravated battery, as provided in**  
20 **Subsection C of Section 30-3-5 NMSA 1978;**

21                           **(e) shooting at a dwelling or occupied**  
22 **building resulting in great bodily harm, as provided in**  
23 **Subsection A of Section 30-3-8 NMSA 1978;**

24                           [~~(b)~~] **(f) shooting at or from a motor**  
25 **vehicle resulting in great bodily harm, as provided in**

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1 Subsection B of Section 30-3-8 NMSA 1978;

2 (g) aggravated battery against a  
3 household member, as provided in Subsection C of Section  
4 30-3-16 NMSA 1978;

5 ~~[(e)]~~ (h) kidnapping resulting in great  
6 bodily harm inflicted upon the victim by the victim's captor,  
7 as provided in Subsection B of Section 30-4-1 NMSA 1978;

8 (i) abuse of a child that results in  
9 great bodily harm to the child, as provided in Subsection E of  
10 Section 30-6-1 NMSA 1978;

11 (j) negligent abuse of a child that  
12 results in the death of the child, as provided in Subsection F  
13 of Section 30-6-1 NMSA 1978;

14 (k) intentional abuse of a child that  
15 results in the death of the child, as provided in Subsection G  
16 or H of Section 30-6-1 NMSA 1978;

17 ~~[(d)]~~ (l) criminal sexual penetration,  
18 as provided in Subsection C, ~~[(e)]~~ D, ~~[(f)]~~ Paragraph (5) or (6)  
19 ~~of Subsection] E or F of Section 30-9-11 NMSA 1978; [and~~

20 ~~[(e)]~~ (m) robbery while armed with a  
21 deadly weapon ~~[resulting in great bodily harm],~~ as provided in  
22 Section 30-16-2 NMSA 1978 ~~[and Subsection A of Section 30-1-12~~  
23 ~~NMSA 1978];~~

24 (n) aggravated arson, as provided in  
25 Section 30-17-6 NMSA 1978;

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1                   (o) aggravated battery upon a peace  
2 officer, as provided in Subsection C of Section 30-22-25 NMSA  
3 1978;

4                   (p) homicide by vehicle or great bodily  
5 harm by vehicle, as provided in Section 66-8-101 NMSA 1978,  
6 while: 1) under the influence of intoxicating liquor; 2) under  
7 the influence of any drug; 3) driving recklessly, as provided  
8 in Section 66-8-113 NMSA 1978; or 4) resisting, evading or  
9 obstructing an officer, as provided in Section 30-22-1 NMSA  
10 1978; and

11                   (q) injury to pregnant woman by vehicle,  
12 as provided in Section 66-8-101.1 NMSA 1978, while: 1) under  
13 the influence of intoxicating liquor; 2) under the influence of  
14 any drug; 3) driving recklessly, as provided in Section  
15 66-8-113 NMSA 1978; or 4) resisting, evading or obstructing an  
16 officer, as provided in Section 30-22-1 NMSA 1978."

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

19           "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

20           A. Except as otherwise provided in Subsection A of  
21 Section 31-18-23 NMSA 1978, an inmate of an institution who was  
22 sentenced to life imprisonment becomes eligible for a parole  
23 hearing after the inmate has served thirty years of the  
24 sentence. Before ordering the parole of an inmate sentenced to  
25 life imprisonment, the board shall:

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1 (1) interview the inmate at the institution  
2 where the inmate is committed;

3 (2) consider all pertinent information  
4 concerning the inmate, including:

5 (a) the circumstances of the offense;

6 (b) mitigating and aggravating  
7 circumstances;

8 (c) whether a deadly weapon was used in  
9 the commission of the offense;

10 (d) whether the inmate is a habitual  
11 offender;

12 (e) the reports filed under Section  
13 31-21-9 NMSA 1978; and

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

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

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

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

25 B. Unless the board finds that it is in the best

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1 interest of society and the parolee to reduce the period of  
2 parole, a person who was sentenced to life imprisonment shall  
3 be required to undergo a minimum period of parole of five  
4 years. During the period of parole, the person shall be under  
5 the guidance and supervision of the board.

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

10 D. Except for certain sex offenders as provided in  
11 Section 31-21-10.1 NMSA 1978, an inmate who was convicted of a  
12 first, second or third degree felony and who has served the  
13 sentence of imprisonment imposed by the court in an institution  
14 designated by the corrections department shall be required to  
15 undergo a two-year period of parole. An inmate who was  
16 convicted of a fourth degree felony and who has served the  
17 sentence of imprisonment imposed by the court in an institution  
18 designated by the corrections department 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 of the conditions of parole and the inmate's duties

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1 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. APPLICABILITY.--The provisions of this act  
12 apply to persons who have been convicted on, before or after  
13 July 1, 2023 of one of the violent felonies described in  
14 Section 1 of this act for the purpose of determining sentencing  
15 enhancements pursuant to that section for subsequent violent  
16 felony convictions on or after July 1, 2023.

17 SECTION 4. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2023.