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SENATE BILL 415

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Bill B. O'Neill

AN ACT

RELATING TO CRIMINAL SENTENCING; REMOVING THE MANDATORY PAROLE
PROVISION FOR PERSONS SENTENCED TO ONE YEAR OR LESS IN PRISON;
REMOVING THE REQUIREMENT OF SENTENCING DEFENDANTS CONVICTED OF
MISDEMEANORS TO A COUNTY JAIL; 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

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- 1 death of a child, life imprisonment;
- 2 (2) for a first degree felony for aggravated
- 3 criminal sexual penetration, life imprisonment;
- 4 (3) for a first degree felony, eighteen years
- 5 imprisonment;
- 6 (4) for a second degree felony resulting in
- 7 the death of a human being, fifteen years imprisonment;
- 8 (5) for a second degree felony for a sexual
- 9 offense against a child, fifteen years imprisonment;
- 10 (6) for a second degree felony, nine years
- 11 imprisonment;
- 12 (7) for a third degree felony resulting in the
- 13 death of a human being, six years imprisonment;
- 14 (8) for a third degree felony for a sexual
- 15 offense against a child, six years imprisonment;
- 16 (9) for a third degree felony, three years
- 17 imprisonment; or
- 18 (10) for a fourth degree felony, eighteen
- 19 months imprisonment.

20 B. The appropriate basic sentence of imprisonment
21 shall be imposed upon a person convicted and sentenced pursuant
22 to Subsection A of this section, unless the court alters the
23 sentence pursuant to the provisions of the Criminal Sentencing
24 Act.

25 C. A period of parole shall be imposed only for

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

19 D. When a court imposes a sentence of imprisonment
20 pursuant to the provisions of Section 31-18-15.1, 31-18-16
21 [~~31-18-16.1~~] or 31-18-17 NMSA 1978 and suspends or defers the
22 basic sentence of imprisonment provided pursuant to the
23 provisions of Subsection A of this section, the period of
24 parole shall be served in accordance with the provisions of
25 Section 31-21-10 NMSA 1978 for the degree of felony for the

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1 basic sentence for which the inmate was convicted. For the
2 purpose of designating a period of parole, a court shall not
3 consider that the basic sentence of imprisonment was suspended
4 or deferred and that the inmate served a period of imprisonment
5 pursuant to the provisions of the Criminal Sentencing Act.

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

8 (1) for a first degree felony resulting in the
9 death of a child, seventeen thousand five hundred dollars
10 (\$17,500);

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

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

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

19 (5) for a second degree felony for a sexual
20 offense against a child, twelve thousand five hundred dollars
21 (\$12,500);

22 (6) for a second degree felony, ten thousand
23 dollars (\$10,000);

24 (7) for a third degree felony resulting in the
25 death of a human being, five thousand dollars (\$5,000);

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1 (8) for a third degree felony for a sexual
2 offense against a child, five thousand dollars (\$5,000); or

3 (9) for a third or fourth degree felony, five
4 thousand dollars (\$5,000).

5 F. When the court imposes a sentence of
6 imprisonment for a felony offense, the court shall indicate
7 whether or not the offense is a serious violent offense, as
8 defined in Section 33-2-34 NMSA 1978. The court shall inform
9 an offender that the offender's sentence of imprisonment is
10 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
11 and 33-2-38 NMSA 1978. If the court fails to inform an
12 offender that the offender's sentence is subject to those
13 provisions or if the court provides the offender with erroneous
14 information regarding those provisions, the failure to inform
15 or the error shall not provide a basis for a writ of habeas
16 corpus.

17 G. No later than October 31 of each year, the
18 New Mexico sentencing commission shall provide a written report
19 to the secretary of corrections, all New Mexico criminal court
20 judges, the administrative office of the district attorneys and
21 the chief public defender. The report shall specify the
22 average reduction in the sentence of imprisonment for serious
23 violent offenses and nonviolent offenses, as defined in Section
24 33-2-34 NMSA 1978, due to meritorious deductions earned by
25 prisoners during the previous fiscal year pursuant to the

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1 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
2 NMSA 1978. The corrections department shall allow the
3 commission access to documents used by the department to
4 determine earned meritorious deductions for prisoners."

5 SECTION 2. Section 31-19-1 NMSA 1978 (being Laws 1963,
6 Chapter 303, Section 29-4, as amended) is amended to read:

7 "31-19-1. SENTENCING AUTHORITY--MISDEMEANORS--
8 IMPRISONMENT AND FINES--PROBATION.--

9 A. Where the defendant has been convicted of a
10 crime constituting a misdemeanor, the judge shall sentence the
11 person to be imprisoned [~~in the county jail~~] for a definite
12 term less than one year or to the payment of a fine of not more
13 than one thousand dollars (\$1,000) or to both such imprisonment
14 and fine in the discretion of the judge.

15 B. Where the defendant has been convicted of a
16 crime constituting a petty misdemeanor, the judge shall
17 sentence the person to be imprisoned in the county jail for a
18 definite term not to exceed six months or to the payment of a
19 fine of not more than five hundred dollars (\$500) or to both
20 such imprisonment and fine in the discretion of the judge.

21 C. When the court has deferred or suspended
22 sentence, it shall order the defendant placed on supervised or
23 unsupervised probation for all or some portion of the period of
24 deferment or suspension."

25 SECTION 3. Section 31-21-10 NMSA 1978 (being Laws 1980,

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1 Chapter 28, Section 1, as amended) is amended to read:

2 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

3 A. An inmate of an institution who was sentenced to
4 life imprisonment becomes eligible for a parole hearing after
5 the inmate has served thirty years of the sentence. Before
6 ordering the parole of an inmate sentenced to life
7 imprisonment, the board shall:

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

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

12 (a) the circumstances of the offense;

13 (b) mitigating and aggravating
14 circumstances;

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

17 (d) whether the inmate is [~~a~~] an
18 habitual offender;

19 (e) the reports filed under Section
20 31-21-9 NMSA 1978; and

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

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

25 (4) make a finding that the inmate is able and

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1 willing to fulfill the obligations of a law-abiding citizen.

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

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

13 C. An inmate of an institution who was sentenced to
14 life imprisonment without possibility of release or parole is
15 not eligible for parole and shall remain incarcerated for the
16 entirety of the inmate's natural life.

17 D. Except for certain sex offenders as provided in
18 Section 31-21-10.1 NMSA 1978 and persons serving a period of
19 incarceration on felony convictions of one year or less who
20 have been ordered to serve a period of parole by the court, as
21 provided by Subsection C of Section 30-18-15 NMSA 1978, an
22 inmate who was convicted of a first, second or third degree
23 felony and who has served the sentence of imprisonment imposed
24 by the court in an institution designated by the corrections
25 department shall be required to undergo a two-year period of

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1 parole. An inmate who was convicted of a fourth degree felony
2 and who has served ~~[the]~~ a sentence of imprisonment imposed by
3 the court in an institution designated by the corrections
4 department that exceeds one year or has agreed and been ordered
5 to serve a period of parole by the court shall be required to
6 undergo a one-year period of parole. During the period of
7 parole, the person shall be under the guidance and supervision
8 of the board. An inmate who was convicted of a misdemeanor or
9 petty misdemeanor and who has served the sentence of
10 imprisonment imposed by the judge in an institution designated
11 by the corrections department is not subject to a period of
12 parole.

13 E. Every person while on parole shall remain in the
14 legal custody of the institution from which the person was
15 released but shall be subject to the orders of the board. The
16 board shall furnish to each inmate as a prerequisite to release
17 under its supervision a written statement of the conditions of
18 parole that shall be accepted and agreed to by the inmate as
19 evidenced by the inmate's signature affixed to a duplicate copy
20 to be retained in the files of the board. The board shall also
21 require as a prerequisite to release the submission and
22 approval of a parole plan. If an inmate refuses to affix the
23 inmate's signature to the written statement of the conditions
24 of parole or does not have an approved parole plan, the inmate
25 shall not be released and shall remain in the custody of the

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1 institution in which the inmate has served the inmate's
2 sentence, excepting parole, until such time as the period of
3 parole the inmate was required to serve, less meritorious
4 deductions, if any, expires, at which time the inmate shall be
5 released from that institution without parole, or until such
6 time that the inmate evidences acceptance and agreement to the
7 conditions of parole as required or receives approval for the
8 inmate's parole plan or both. Time served from the date that
9 an inmate refuses to accept and agree to the conditions of
10 parole or fails to receive approval for the inmate's parole
11 plan shall reduce the period, if any, to be served under parole
12 at a later date. If the district court has ordered that the
13 inmate make restitution to a victim as provided in Section
14 31-17-1 NMSA 1978, the board shall include restitution as a
15 condition of parole. The board shall also [~~personally~~] apprise
16 the inmate in person of the conditions of parole and the
17 inmate's duties relating thereto.

18 F. When a person on parole has performed the
19 obligations of the person's release for the period of parole
20 provided in this section, the board shall make a final order of
21 discharge and issue the person a certificate of discharge.

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

- 25 (1) to pay the actual costs of parole services

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

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

23 H. The provisions of this section shall apply to
24 all inmates except geriatric, permanently incapacitated and
25 terminally ill inmates eligible for the medical and geriatric

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1 parole program as provided by the Parole Board Act."

2 SECTION 4. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2013.

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