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HOUSE BILL

**56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING THAT THE PENALTY FOR A  
FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS FIVE  
YEARS IMPRISONMENT; INCREASING THE PENALTY FOR A SERIOUS  
VIOLENT FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE  
TO A SECOND DEGREE FELONY; PROVIDING THAT A FELON MAY NOT  
POSSESS A FIREARM AFTER CONVICTION FOR ANY PERIOD OF TIME;  
PROVIDING THAT THE SENTENCE FOR A FELON IN POSSESSION OF A  
FIREARM OR DESTRUCTIVE DEVICE IS INELIGIBLE FOR EARNED  
MERITORIOUS DEDUCTION.

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

**SECTION 1.** Section 30-7-16 NMSA 1978 (being Laws 1981,  
Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

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1           A. It is unlawful for the following persons to  
2 receive, transport or possess a firearm or destructive device  
3 in this state:

4                   (1) a felon;

5                   (2) a person subject to an order of protection  
6 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

7                   (3) a person convicted of any of the following  
8 crimes:

9                           (a) battery against a household member  
10 pursuant to Section 30-3-15 NMSA 1978;

11                           (b) criminal damage to property of a  
12 household member pursuant to Section 30-3-18 NMSA 1978;

13                           (c) a first offense of stalking pursuant  
14 to Section 30-3A-3 NMSA 1978; or

15                           (d) a crime listed in 18 U.S.C. 921.

16           B. A felon found in possession of a firearm or  
17 destructive device shall be guilty of a third degree felony and  
18 shall be sentenced in accordance with the provisions of the  
19 Criminal Sentencing Act. A felon found in possession of a  
20 firearm or destructive device for a second or subsequent  
21 offense shall be guilty of a second degree felony.

22           C. A serious violent felon that is found to be in  
23 possession of a firearm or destructive device shall be guilty  
24 of a [~~third~~] second degree felony [~~and notwithstanding the~~  
25 ~~provisions of Section 31-18-15 NMSA 1978, shall be sentenced to~~

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1 ~~a basic term of six years imprisonment].~~

2 D. Any person subject to an order of protection  
3 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted  
4 of a crime listed in Paragraph (3) of Subsection A of this  
5 section who receives, transports or possesses a firearm or  
6 destructive device is guilty of a misdemeanor.

7 E. As used in this section:

8 (1) except as provided in Paragraph (2) of  
9 this subsection, "destructive device" means:

10 (a) any explosive, incendiary or poison  
11 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge  
12 of more than four ounces; 4) missile having an explosive or  
13 incendiary charge of more than one-fourth ounce; 5) mine; or 6)  
14 similar device;

15 (b) any type of weapon by whatever name  
16 known that will, or that may be readily converted to, expel a  
17 projectile by the action of an explosive or other propellant,  
18 the barrel or barrels of which have a bore of more than one-  
19 half inch in diameter, except a shotgun or shotgun shell that  
20 is generally recognized as particularly suitable for sporting  
21 purposes; or

22 (c) any combination of parts either  
23 designed or intended for use in converting any device into a  
24 destructive device as defined in this paragraph and from which  
25 a destructive device may be readily assembled;

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1 (2) the term "destructive device" does not  
2 include any device that is neither designed nor redesigned for  
3 use as a weapon or any device, although originally designed for  
4 use as a weapon, that is redesigned for use as a signaling,  
5 pyrotechnic, line throwing, safety or similar device;

6 (3) "felon" means a person convicted of a  
7 felony offense by a court of the United States or of any state  
8 or political subdivision thereof and:

9 [~~(a)~~] ~~less than ten years have passed~~  
10 ~~since the person completed serving a sentence or period of~~  
11 ~~probation for the felony conviction, whichever is later;~~

12 ~~(b)]~~ (a) the person has not been  
13 pardoned for the felony conviction by the proper authority; and

14 [~~(c)]~~ (b) the person has not received a  
15 deferred sentence;

16 (4) "firearm" means any weapon that will or is  
17 designed to or may readily be converted to expel a projectile  
18 by the action of an explosion or the frame or receiver of any  
19 such weapon; and

20 (5) "serious violent felon" means a person  
21 convicted of an offense enumerated in Subparagraphs (a) through  
22 [~~(n)]~~ (p) of Paragraph (4) of Subsection L of Section 33-2-34  
23 NMSA 1978; provided that:

24 (a) less than ten years have passed  
25 since the person completed serving a sentence or a period of

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1 probation for the felony conviction, whichever is later;

2 (b) the person has not been pardoned for  
3 the felony conviction by the proper authority; and

4 (c) the person has not received a  
5 deferred sentence and completed the total term of deferment as  
6 provided in Section 31-20-9 NMSA 1978."

7 SECTION 2. Section 31-18-15 NMSA 1978 (being Laws 1977,  
8 Chapter 216, Section 4, as amended) is amended to read:

9 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
10 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
11 DEDUCTIONS.--

12 A. As used in a statute that establishes a  
13 noncapital felony, the following defined felony classifications  
14 and associated basic sentences of imprisonment are as follows:

15	FELONY CLASSIFICATION	BASIC SENTENCE
16	first degree felony	
17	resulting in the death	
18	of a child	life imprisonment
19	first degree felony for	
20	aggravated criminal sexual	
21	penetration	life imprisonment
22	first degree felony	eighteen years imprisonment
23	second degree felony	
24	resulting in the death of	
25	a human being	fifteen years imprisonment

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1 second degree felony for a  
2 sexual offense against a  
3 child fifteen years imprisonment  
4 second degree felony for  
5 sexual exploitation of  
6 children twelve years imprisonment  
7 second degree felony nine years imprisonment  
8 third degree felony resulting  
9 in the death of a human being six years imprisonment  
10 third degree felony for a  
11 sexual offense against a  
12 child six years imprisonment  
13 third degree felony for sexual  
14 exploitation of children eleven years imprisonment  
15 third degree felony for  
16 possession of a firearm or  
17 destructive device by a felon  
18 pursuant to Subsection B of  
19 Section 30-7-16 NMSA 1978 five years imprisonment  
20 third degree felony three years imprisonment  
21 fourth degree felony for  
22 sexual exploitation of  
23 children ten years imprisonment  
24 fourth degree felony eighteen months imprisonment.  
25 B. The appropriate basic sentence of imprisonment

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1 shall be imposed upon a person convicted and sentenced pursuant  
2 to Subsection A of this section, unless the court alters the  
3 sentence pursuant to the provisions of the Criminal Sentencing  
4 Act.

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

24 D. When a court imposes a sentence of imprisonment  
25 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or  
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1 31-18-17 NMSA 1978 and suspends or defers the basic sentence of  
2 imprisonment provided pursuant to the provisions of Subsection  
3 A of this section, the period of parole shall be served in  
4 accordance with the provisions of Section 31-21-10 NMSA 1978  
5 for the degree of felony for the basic sentence for which the  
6 inmate was convicted. For the purpose of designating a period  
7 of parole, a court shall not consider that the basic sentence  
8 of imprisonment was suspended or deferred and that the inmate  
9 served a period of imprisonment pursuant to the provisions of  
10 the Criminal Sentencing Act.

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

13 (1) for a first degree felony resulting in the  
14 death of a child, seventeen thousand five hundred dollars  
15 (\$17,500);

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

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

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

24 (5) for a second degree felony for a sexual  
25 offense against a child, twelve thousand five hundred dollars

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1 (\$12,500);

2 (6) for a second degree felony for sexual  
3 exploitation of children, five thousand dollars (\$5,000);

4 (7) for a second degree felony, ten thousand  
5 dollars (\$10,000);

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

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

10 (10) for a third degree felony for sexual  
11 exploitation of children, five thousand dollars (\$5,000);

12 (11) for a third or fourth degree felony, five  
13 thousand dollars (\$5,000); or

14 (12) for a fourth degree felony for sexual  
15 exploitation of children, five thousand dollars (\$5,000).

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

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1 or the error shall not provide a basis for a writ of habeas  
2 corpus.

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

16 SECTION 3. Section 33-2-34 NMSA 1978 (being Laws 1999,  
17 Chapter 238, Section 1, as amended) is amended to read:

18 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS  
19 DEDUCTIONS.--

20 A. To earn meritorious deductions, a prisoner  
21 confined in a correctional facility designated by the  
22 corrections department must be an active participant in programs  
23 recommended for the prisoner by the classification supervisor  
24 and approved by the warden or the warden's designee.

25 Meritorious deductions shall not exceed the following amounts:

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1 (1) for a prisoner confined for committing a  
2 serious violent offense, up to a maximum of four days per month  
3 of time served;

4 (2) for a prisoner confined for committing a  
5 nonviolent offense, up to a maximum of thirty days per month of  
6 time served;

7 (3) for a prisoner confined following  
8 revocation of parole for the alleged commission of a new felony  
9 offense or for absconding from parole, up to a maximum of four  
10 days per month of time served during the parole term following  
11 revocation; and

12 (4) for a prisoner confined following  
13 revocation of parole for a reason other than the alleged  
14 commission of a new felony offense or absconding from parole:

15 (a) up to a maximum of eight days per  
16 month of time served during the parole term following  
17 revocation, if the prisoner was convicted of a serious violent  
18 offense or failed to pass a drug test administered as a  
19 condition of parole; or

20 (b) up to a maximum of thirty days per  
21 month of time served during the parole term following  
22 revocation, if the prisoner was convicted of a nonviolent  
23 offense.

24 B. A prisoner may earn meritorious deductions upon  
25 recommendation by the classification supervisor, based upon the

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1 prisoner's active participation in approved programs and the  
2 quality of the prisoner's participation in those approved  
3 programs. A prisoner may not earn meritorious deductions unless  
4 the recommendation of the classification supervisor is approved  
5 by the warden or the warden's designee.

6 C. If a prisoner's active participation in approved  
7 programs is interrupted by a lockdown at a correctional  
8 facility, the prisoner may continue to be awarded meritorious  
9 deductions at the rate the prisoner was earning meritorious  
10 deductions prior to the lockdown, unless the warden or the  
11 warden's designee determines that the prisoner's conduct  
12 contributed to the initiation or continuance of the lockdown.

13 D. A prisoner confined in a correctional facility  
14 designated by the corrections department is eligible for lump-  
15 sum meritorious deductions as follows:

16 (1) for successfully completing an approved  
17 vocational, substance abuse or mental health program, one month;  
18 except when the prisoner has a demonstrable physical, mental  
19 health or developmental disability that prevents the prisoner  
20 from successfully earning a high school equivalency credential,  
21 in which case, the prisoner shall be awarded three months;

22 (2) for earning a high school equivalency  
23 credential, three months;

24 (3) for earning an associate's degree, four  
25 months;

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1 (4) for earning a bachelor's degree, five  
2 months;

3 (5) for earning a graduate qualification, five  
4 months; and

5 (6) for engaging in a heroic act of saving  
6 life or property, engaging in extraordinary conduct for the  
7 benefit of the state or the public that is at great expense or  
8 risk to or involves great effort on the part of the prisoner or  
9 engaging in extraordinary conduct far in excess of normal  
10 program assignments that demonstrates the prisoner's commitment  
11 to self-rehabilitation. The classification supervisor and the  
12 warden or the warden's designee may recommend the number of days  
13 to be awarded in each case based upon the particular merits, but  
14 any award shall be determined by the director of the adult  
15 institutions division of the corrections department or the  
16 director's designee.

17 E. Lump-sum meritorious deductions, provided in  
18 Paragraphs (1) through (6) of Subsection D of this section, may  
19 be awarded in addition to the meritorious deductions provided in  
20 Subsections A and B of this section. Lump-sum meritorious  
21 deductions shall not exceed one year per award and shall not  
22 exceed a total of one year for all lump-sum meritorious  
23 deductions awarded in any consecutive twelve-month period.

24 F. A prisoner is not eligible to earn meritorious  
25 deductions if the prisoner:

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1                   (1) disobeys an order to perform labor,  
2 pursuant to Section 33-8-4 NMSA 1978;

3                   (2) is in disciplinary segregation;

4                   (3) is confined for committing a serious  
5 violent offense and is within the first sixty days of receipt by  
6 the corrections department; or

7                   (4) is not an active participant in programs  
8 recommended and approved for the prisoner by the classification  
9 supervisor.

10                  G. The provisions of this section shall not be  
11 interpreted as providing eligibility to earn meritorious  
12 deductions from a sentence of life imprisonment or a sentence of  
13 life imprisonment without possibility of release or parole.

14                  H. The corrections department shall promulgate rules  
15 to implement the provisions of this section, and the rules shall  
16 be matters of public record. A concise summary of the rules  
17 shall be provided to each prisoner, and each prisoner shall  
18 receive a quarterly statement of the meritorious deductions  
19 earned.

20                  I. A New Mexico prisoner confined in a federal or  
21 out-of-state correctional facility is eligible to earn  
22 meritorious deductions for active participation in programs on  
23 the basis of the prisoner's conduct and program reports  
24 furnished by that facility to the corrections department. All  
25 decisions regarding the award and forfeiture of meritorious

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1 deductions at such facility are subject to final approval by the  
2 director of the adult institutions division of the corrections  
3 department or the director's designee.

4 J. In order to be eligible for meritorious  
5 deductions, a prisoner confined in a federal or out-of-state  
6 correctional facility designated by the corrections department  
7 must actively participate in programs that are available. If a  
8 federal or out-of-state correctional facility does not have  
9 programs available for a prisoner, the prisoner may be awarded  
10 meritorious deductions at the rate the prisoner could have  
11 earned meritorious deductions if the prisoner had actively  
12 participated in programs.

13 K. A prisoner confined in a correctional facility in  
14 New Mexico that is operated by a private company, pursuant to a  
15 contract with the corrections department, is eligible to earn  
16 meritorious deductions in the same manner as a prisoner confined  
17 in a state-run correctional facility. All decisions regarding  
18 the award or forfeiture of meritorious deductions at such  
19 facilities are subject to final approval by the director of the  
20 adult institutions division of the corrections department or the  
21 director's designee.

22 L. As used in this section:

23 (1) "active participant" means a prisoner who  
24 has begun, and is regularly engaged in, approved programs;

25 (2) "program" means work, vocational,

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1 educational, substance abuse and mental health programs,  
2 approved by the classification supervisor, that contribute to a  
3 prisoner's self-betterment through the development of personal  
4 and occupational skills. "Program" does not include  
5 recreational activities;

6 (3) "nonviolent offense" means any offense  
7 other than a serious violent offense; and

8 (4) "serious violent offense" means:

9 (a) second degree murder, as provided in  
10 Section 30-2-1 NMSA 1978;

11 (b) voluntary manslaughter, as provided  
12 in Section 30-2-3 NMSA 1978;

13 (c) third degree aggravated battery, as  
14 provided in Section 30-3-5 NMSA 1978;

15 (d) third degree aggravated battery  
16 against a household member, as provided in Section 30-3-16 NMSA  
17 1978;

18 (e) first degree kidnapping, as provided  
19 in Section 30-4-1 NMSA 1978;

20 (f) first and second degree criminal  
21 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

22 (g) second and third degree criminal  
23 sexual contact of a minor, as provided in Section 30-9-13 NMSA  
24 1978;

25 (h) first and second degree robbery, as

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1 provided in Section 30-16-2 NMSA 1978;

2 (i) second degree aggravated arson, as  
3 provided in Section 30-17-6 NMSA 1978;

4 (j) shooting at a dwelling or occupied  
5 building, as provided in Section 30-3-8 NMSA 1978;

6 (k) shooting at or from a motor vehicle,  
7 as provided in Section 30-3-8 NMSA 1978;

8 (l) aggravated battery upon a peace  
9 officer, as provided in Section 30-22-25 NMSA 1978;

10 (m) assault with intent to commit a  
11 violent felony upon a peace officer, as provided in Section  
12 30-22-23 NMSA 1978;

13 (n) aggravated assault upon a peace  
14 officer, as provided in Section 30-22-22 NMSA 1978; [✕]

15 (o) second and third degree felon in  
16 possession of a firearm or destructive device, as provided in  
17 Section 30-7-16 NMSA 1978; or

18 [~~✕~~] (p) any of the following offenses,  
19 when the nature of the offense and the resulting harm are such  
20 that the court judges the crime to be a serious violent offense  
21 for the purpose of this section: 1) involuntary manslaughter,  
22 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree  
23 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)  
24 third degree assault with intent to commit a violent felony, as  
25 provided in Section 30-3-3 NMSA 1978; 4) fourth degree

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1 aggravated assault against a household member, as provided in  
2 Section 30-3-13 NMSA 1978; 5) third degree assault against a  
3 household member with intent to commit a violent felony, as  
4 provided in Section 30-3-14 NMSA 1978; 6) third and fourth  
5 degree aggravated stalking, as provided in Section 30-3A-3.1  
6 NMSA 1978; 7) second degree kidnapping, as provided in Section  
7 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as  
8 provided in Section 30-6-1 NMSA 1978; 9) first, second and third  
9 degree abuse of a child, as provided in Section 30-6-1 NMSA  
10 1978; 10) third degree dangerous use of explosives, as provided  
11 in Section 30-7-5 NMSA 1978; 11) third and fourth degree  
12 criminal sexual penetration, as provided in Section 30-9-11 NMSA  
13 1978; 12) fourth degree criminal sexual contact of a minor, as  
14 provided in Section 30-9-13 NMSA 1978; 13) third degree robbery,  
15 as provided in Section 30-16-2 NMSA 1978; 14) third degree  
16 homicide by vehicle or great bodily harm by vehicle, as provided  
17 in Section 66-8-101 NMSA 1978; or 15) battery upon a peace  
18 officer, as provided in Section 30-22-24 NMSA 1978.

19 M. Except for sex offenders, as provided in Section  
20 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a  
21 correctional facility designated by the corrections department  
22 who has been released from confinement and who is serving a  
23 parole term may be awarded earned meritorious deductions of up  
24 to thirty days per month upon recommendation of the parole  
25 officer supervising the offender, with the final approval of the

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1 adult parole board. The offender must be in compliance with all  
2 the conditions of the offender's parole to be eligible for  
3 earned meritorious deductions. The adult parole board may  
4 remove earned meritorious deductions previously awarded if the  
5 offender later fails to comply with the conditions of the  
6 offender's parole. The corrections department and the adult  
7 parole board shall promulgate rules to implement the provisions  
8 of this subsection. This subsection applies to offenders who  
9 are serving a parole term on or after July 1, 2004."

10 SECTION 4. EFFECTIVE DATE.--The effective date of the  
11 provisions of this act is July 1, 2024.