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HOUSE BILL 164

**50TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2012**

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTIES FOR  
SECOND DEGREE MURDER, VOLUNTARY MANSLAUGHTER AND INVOLUNTARY  
MANSLAUGHTER; MAKING APPROPRIATIONS.

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

**SECTION 1.** Section 30-2-1 NMSA 1978 (being Laws 1963,  
Chapter 303, Section 2-1, as amended) is amended to read:

"30-2-1. MURDER.--

A. Murder in the first degree is the killing of one  
human being by another without lawful justification or excuse,  
by any of the means with which death may be caused:

(1) by any kind of willful, deliberate and  
premeditated killing;

(2) in the commission of or attempt to commit  
any felony; or

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1 (3) by any act greatly dangerous to the lives  
2 of others, indicating a depraved mind regardless of human life.

3 Whoever commits murder in the first degree is guilty of a  
4 capital felony.

5 B. Unless ~~[he]~~ a person is acting upon sufficient  
6 provocation, upon a sudden quarrel or in the heat of passion, a  
7 person who kills another human being without lawful  
8 justification or excuse commits murder in the second degree if  
9 in performing the acts ~~[which]~~ that cause the death ~~[he]~~ the  
10 person knows that such acts create a strong probability of  
11 death or great bodily harm to that individual or another.

12 Murder in the second degree is a lesser included offense  
13 of the crime of murder in the first degree.

14 Whoever commits murder in the second degree is guilty of a  
15 second degree felony ~~[resulting in the death of a human being]~~  
16 for murder."

17 SECTION 2. Section 30-2-3 NMSA 1978 (being Laws 1963,  
18 Chapter 303, Section 2-3, as amended) is amended to read:

19 "30-2-3. MANSLAUGHTER.--Manslaughter is the unlawful  
20 killing of a human being without malice.

21 A. Voluntary manslaughter consists of manslaughter  
22 committed upon a sudden quarrel or in the heat of passion.

23 Whoever commits voluntary manslaughter is guilty of a  
24 third degree felony ~~[resulting in the death of a human being]~~  
25 for voluntary manslaughter.

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1           B. Involuntary manslaughter consists of  
2 manslaughter committed in the commission of an unlawful act not  
3 amounting to felony, or in the commission of a lawful act  
4 [~~which~~] that might produce death in an unlawful manner or  
5 without due caution and circumspection.

6           Whoever commits involuntary manslaughter is guilty of a  
7 fourth degree felony for involuntary manslaughter."

8           SECTION 3. Section 31-18-15 NMSA 1978 (being Laws 1977,  
9 Chapter 216, Section 4, as amended) is amended to read:

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

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

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

17                   (2) for a first degree felony for aggravated  
18 criminal sexual penetration, life imprisonment;

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

21                   (4) for a second degree felony [~~resulting in~~  
22 ~~the death of a human being, fifteen~~] for murder, twenty years  
23 imprisonment, nine years of which shall not be suspended,  
24 deferred or taken under advisement;

25                   (5) for a second degree felony for a sexual

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1 offense against a child, fifteen years imprisonment;

2 (6) for a second degree felony, nine years  
3 imprisonment;

4 (7) for a third degree felony for voluntary  
5 manslaughter, ten years imprisonment;

6 [~~(7)~~] (8) for a third degree felony resulting  
7 in the death of a human being, six years imprisonment;

8 [~~(8)~~] (9) for a third degree felony for a  
9 sexual offense against a child, six years imprisonment;

10 [~~(9)~~] (10) for a third degree felony, three  
11 years imprisonment; [~~or~~]

12 (11) for a fourth degree felony for  
13 involuntary manslaughter, five years imprisonment; or

14 [~~(10)~~] (12) for a fourth degree felony,  
15 eighteen months imprisonment.

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

21 C. The court shall include in the judgment and  
22 sentence of each person convicted and sentenced to imprisonment  
23 in a corrections facility designated by the corrections  
24 department authority for a period of parole to be served in  
25 accordance with the provisions of Section 31-21-10 NMSA 1978

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1 after the completion of any actual time of imprisonment and  
2 authority to require, as a condition of parole, the payment of  
3 the costs of parole services and reimbursement to a law  
4 enforcement agency or local crime stopper program in accordance  
5 with the provisions of that section. The period of parole  
6 shall be deemed to be part of the sentence of the convicted  
7 person in addition to the basic sentence imposed pursuant to  
8 Subsection A of this section together with alterations, if any,  
9 pursuant to the provisions of the Criminal Sentencing Act.

10 D. When a court imposes a sentence of imprisonment  
11 pursuant to the provisions of Section 31-18-15.1, 31-18-16  
12 [~~31-18-16.1~~] or 31-18-17 NMSA 1978 and suspends or defers the  
13 basic sentence of imprisonment provided pursuant to the  
14 provisions of Subsection A of this section, the period of  
15 parole shall be served in accordance with the provisions of  
16 Section 31-21-10 NMSA 1978 for the degree of felony for the  
17 basic sentence for which the inmate was convicted. For the  
18 purpose of designating a period of parole, a court shall not  
19 consider that the basic sentence of imprisonment was suspended  
20 or deferred and that the inmate served a period of imprisonment  
21 pursuant to the provisions of the Criminal Sentencing Act.

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

24 (1) for a first degree felony resulting in the  
25 death of a child, seventeen thousand five hundred dollars

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1 (\$17,500);

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

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

7 (4) for a second degree felony [~~resulting in~~  
8 ~~the death of a human being~~] for murder, twelve thousand five  
9 hundred dollars (\$12,500);

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

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

15 (7) for a third degree felony for voluntary  
16 manslaughter, ten thousand dollars (\$10,000);

17 [~~(7)~~] (8) for a third degree felony resulting  
18 in the death of a human being, five thousand dollars (\$5,000);

19 [~~(8)~~] (9) for a third degree felony for a  
20 sexual offense against a child, five thousand dollars (\$5,000);  
21 or

22 [~~(9)~~] (10) for a third degree felony, a fourth  
23 degree felony for involuntary manslaughter or a fourth degree  
24 felony, five thousand dollars (\$5,000).

25 F. When the court imposes a sentence of

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

12 G. No later than October 31 of each year, the  
13 New Mexico sentencing commission shall provide a written report  
14 to the secretary of corrections, all New Mexico criminal court  
15 judges, the administrative office of the district attorneys and  
16 the chief public defender. The report shall specify the  
17 average reduction in the sentence of imprisonment for serious  
18 violent offenses and nonviolent offenses, as defined in Section  
19 33-2-34 NMSA 1978, due to meritorious deductions earned by  
20 prisoners during the previous fiscal year pursuant to the  
21 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38  
22 NMSA 1978. The corrections department shall allow the  
23 commission access to documents used by the department to  
24 determine earned meritorious deductions for prisoners."

25 SECTION 4. APPROPRIATIONS.--

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1           A. One million eight hundred thousand dollars  
2 (\$1,800,000) is appropriated from the general fund to the  
3 following entities for the following amounts for expenditure in  
4 fiscal year 2013 to cover the increase in the costs of  
5 operations as a result of the increased penalties in this act:

6                   (1) one hundred thousand dollars (\$100,000) to  
7 the first judicial district attorney;

8                   (2) one hundred thousand dollars (\$100,000) to  
9 the second judicial district attorney;

10                   (3) one hundred thousand dollars (\$100,000) to  
11 the third judicial district attorney;

12                   (4) fifty thousand dollars (\$50,000) to the  
13 fourth judicial district attorney;

14                   (5) fifty thousand dollars (\$50,000) to the  
15 fifth judicial district attorney;

16                   (6) fifty thousand dollars (\$50,000) to the  
17 sixth judicial district attorney;

18                   (7) fifty thousand dollars (\$50,000) to the  
19 seventh judicial district attorney;

20                   (8) fifty thousand dollars (\$50,000) to the  
21 eighth judicial district attorney;

22                   (9) fifty thousand dollars (\$50,000) to the  
23 ninth judicial district attorney;

24                   (10) fifty thousand dollars (\$50,000) to the  
25 tenth judicial district attorney;

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1                   (11) fifty thousand dollars (\$50,000) to the  
2 eleventh judicial district attorney, division one;

3                   (12) fifty thousand dollars (\$50,000) to the  
4 eleventh judicial district attorney, division two;

5                   (13) fifty thousand dollars (\$50,000) to the  
6 twelfth judicial district attorney;

7                   (14) one hundred thousand dollars (\$100,000)  
8 to the thirteenth judicial district attorney; and

9                   (15) nine hundred thousand dollars (\$900,000)  
10 to the public defender department.

11                   B. Any unexpended or unencumbered balance remaining  
12 at the end of fiscal year 2013 shall revert to the general  
13 fund.

14                   SECTION 5. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2012.