

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 65

52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016

AN ACT

RELATING TO CHILD EXPLOITATION; ESTABLISHING INCREASED
PENALTIES FOR CHILD EXPLOITATION OFFENSES; CREATING A NEW BASIC
SENTENCING STRUCTURE FOR SEXUAL EXPLOITATION OF CHILDREN;
DECLARING AN EMERGENCY.

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

SECTION 1. Section 30-6A-3 NMSA 1978 (being Laws 1984,
Chapter 92, Section 3, as amended) is amended to read:

"30-6A-3. SEXUAL EXPLOITATION OF CHILDREN.--

A. It is unlawful for a person to intentionally
possess any obscene visual or print medium depicting any
prohibited sexual act or simulation of such an act if that
person knows or has reason to know that the obscene medium
depicts any prohibited sexual act or simulation of such act and
if that person knows or has reason to know that one or more of

.204062.3

underscored material = new
[bracketed material] = delete

1 the participants in that act is a child under eighteen years of
2 age. A person who violates the provisions of this subsection
3 is guilty of a fourth degree felony for sexual exploitation of
4 children and shall be sentenced pursuant to the provisions of
5 Section 31-18-15 NMSA 1978. When a separate finding of fact
6 made by a court or jury shows beyond a reasonable doubt that a
7 child depicted in the visual or print medium is a child under
8 the age of thirteen, the basic sentence shall be increased by
9 one year, and the sentence imposed by this subsection shall be
10 the first year served and shall not be suspended or deferred;
11 provided that when the offender is a youthful offender, the
12 sentence imposed by this subsection may be increased by one
13 year.

14 B. It is unlawful for a person to intentionally
15 distribute any obscene visual or print medium depicting any
16 prohibited sexual act or simulation of such an act if that
17 person knows or has reason to know that the obscene medium
18 depicts any prohibited sexual act or simulation of such act and
19 if that person knows or has reason to know that one or more of
20 the participants in that act is a child under eighteen years of
21 age. A person who violates the provisions of this subsection
22 is guilty of a third degree felony for sexual exploitation of
23 children and shall be sentenced pursuant to the provisions of
24 Section 31-18-15 NMSA 1978.

25 C. It is unlawful for a person to intentionally

1 cause or permit a child under eighteen years of age to engage
2 in any prohibited sexual act or simulation of such an act if
3 that person knows, has reason to know or intends that the act
4 may be recorded in any obscene visual or print medium or
5 performed publicly. A person who violates the provisions of
6 this subsection is guilty of a third degree felony for sexual
7 exploitation of children and shall be sentenced pursuant to the
8 provisions of Section 31-18-15 NMSA 1978 unless the child is
9 under the age of thirteen, in which event the person is guilty
10 of a second degree felony for sexual exploitation of children
11 and shall be sentenced pursuant to the provisions of Section
12 31-18-15 NMSA 1978.

13 D. It is unlawful for a person to intentionally
14 manufacture any obscene visual or print medium depicting any
15 prohibited sexual act or simulation of such an act if one or
16 more of the participants in that act is a child under eighteen
17 years of age. A person who violates the provisions of this
18 subsection is guilty of a second degree felony for sexual
19 exploitation of children and shall be sentenced pursuant to the
20 provisions of Section 31-18-15 NMSA 1978.

21 E. It is unlawful for a person to intentionally
22 manufacture any obscene visual or print medium depicting any
23 prohibited sexual act or simulation of such an act if that
24 person knows or has reason to know that the obscene medium
25 depicts a prohibited sexual act or simulation of such an act

.204062.3

1 and if that person knows or has reason to know that a real
2 child under eighteen years of age, who is not a participant, is
3 depicted as a participant in that act. A person who violates
4 the provisions of this subsection is guilty of a fourth degree
5 felony.

6 F. It is unlawful for a person to intentionally
7 distribute any obscene visual or print medium depicting any
8 prohibited sexual act or simulation of such an act if that
9 person knows or has reason to know that the obscene medium
10 depicts a prohibited sexual act or simulation of such an act
11 and if that person knows or has reason to know that a real
12 child under eighteen years of age, who is not a participant, is
13 depicted as a participant in that act. A person who violates
14 the provisions of this subsection is guilty of a third degree
15 felony.

16 G. The penalties provided for in this section shall
17 be in addition to those set out in Section 30-9-11 NMSA 1978."

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

20 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
21 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
22 DEDUCTIONS.--

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

25 (1) for a first degree felony resulting in the

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 for sexual
11 exploitation of children, twelve years imprisonment;

12 [~~(6)~~] (7) for a second degree felony, nine
13 years imprisonment;

14 [~~(7)~~] (8) for a third degree felony resulting
15 in the death of a human being, six years imprisonment;

16 [~~(8)~~] (9) for a third degree felony for a
17 sexual offense against a child, six years imprisonment;

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

20 [~~(9)~~] (11) for a third degree felony, three
21 years imprisonment; [~~(9)~~]

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

24 [~~(10)~~] (13) for a fourth degree felony,
25 eighteen months imprisonment.

.204062.3

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

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

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

.204062.3

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

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

9 (1) for a first degree felony resulting in the
 10 death of a child, seventeen thousand five hundred dollars
 11 (\$17,500);

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

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

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

20 (5) for a second degree felony for a sexual
 21 offense against a child, twelve thousand five hundred dollars
 22 (\$12,500);

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

25 [~~6~~] (7) for a second degree felony, ten

.204062.3

1 thousand dollars (\$10,000);

2 [~~(7)~~] (8) for a third degree felony resulting
3 in the death of a human being, five thousand dollars (\$5,000);

4 [~~(8)~~] (9) for a third degree felony for a
5 sexual offense against a child, five thousand dollars (\$5,000);

6 [~~or~~]

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

9 [~~(9)~~] (11) for a third or fourth degree
10 felony, five thousand dollars (\$5,000); or

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

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

25 G. No later than October 31 of each year, the

1 New Mexico sentencing commission shall provide a written report
2 to the secretary of corrections, all New Mexico criminal court
3 judges, the administrative office of the district attorneys and
4 the chief public defender. The report shall specify the
5 average reduction in the sentence of imprisonment for serious
6 violent offenses and nonviolent offenses, as defined in Section
7 33-2-34 NMSA 1978, due to meritorious deductions earned by
8 prisoners during the previous fiscal year pursuant to the
9 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
10 NMSA 1978. The corrections department shall allow the
11 commission access to documents used by the department to
12 determine earned meritorious deductions for prisoners."

13 SECTION 3. EMERGENCY.--It is necessary for the public
14 peace, health and safety that this act take effect immediately.

15 - 9 -
16
17
18
19
20
21
22
23
24
25