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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 the participants in that act is a child under
eighteen years of age. A person who violates the provisions
of this subsection is guilty of a fourth degree felony for
sexual exploitation of children and shall be sentenced
pursuant to the provisions of Section 31-18-15 NMSA 1978.
When a separate finding of fact made by a court or jury shows
beyond a reasonable doubt that a child depicted in the visual
or print medium is a child under the age of thirteen, the
basic sentence shall be increased by one year, and the

1 sentence imposed by this subsection shall be the first year
2 served and shall not be suspended or deferred; provided that
3 when the offender is a youthful offender, the sentence
4 imposed by this subsection may be increased by one year.

5 B. The provisions of Subsection A of this section
6 shall not apply to a depiction possessed by a child under the
7 age of eighteen in which the depicted child is between the
8 ages of fourteen and eighteen and the depicted child
9 knowingly and voluntarily consented to the possession, and:

10 (1) the depicted child knowingly and
11 voluntarily consented to the creation of the depiction; or

12 (2) the depicted child knowingly and
13 voluntarily produced the depiction without coercion.

14 This subsection shall not prohibit prosecution nor
15 create an immunity from prosecution for the possession of
16 depictions that are the result of coercion.

17 C. It is unlawful for a person to intentionally
18 distribute any obscene visual or print medium depicting any
19 prohibited sexual act or simulation of such an act if that
20 person knows or has reason to know that the obscene medium
21 depicts any prohibited sexual act or simulation of such act
22 and if that person knows or has reason to know that one or
23 more of the participants in that act is a child under
24 eighteen years of age. A person who violates the provisions
25 of this subsection is guilty of a third degree felony for

1 sexual exploitation of children and shall be sentenced
2 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

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

24 F. It is unlawful for a person to intentionally
25 manufacture any obscene visual or print medium depicting any

1 prohibited sexual act or simulation of such an act if that
2 person knows or has reason to know that the obscene medium
3 depicts a prohibited sexual act or simulation of such an act
4 and if that person knows or has reason to know that a real
5 child under eighteen years of age, who is not a participant,
6 is depicted as a participant in that act. A person who
7 violates the provisions of this subsection is guilty of a
8 fourth degree felony.

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

19 H. The penalties provided for in this section
20 shall be in addition to those set out in Section 30-9-11
21 NMSA 1978."

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

24 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
25 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS

1 DEDUCTIONS.--

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

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

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

8 (3) for a first degree felony, eighteen
9 years imprisonment;

10 (4) for a second degree felony resulting in
11 the death of a human being, fifteen years imprisonment;

12 (5) for a second degree felony for a sexual
13 offense against a child, fifteen years imprisonment;

14 (6) for a second degree felony for sexual
15 exploitation of children, twelve years imprisonment;

16 (7) for a second degree felony, nine years
17 imprisonment;

18 (8) for a third degree felony resulting in
19 the death of a human being, six years imprisonment;

20 (9) for a third degree felony for a sexual
21 offense against a child, six years imprisonment;

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

24 (11) for a third degree felony, three years
25 imprisonment;

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

3 (13) for a fourth degree felony, eighteen
4 months imprisonment.

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

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

25 D. When a court imposes a sentence of imprisonment

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

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

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

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

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

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

1 (5) for a second degree felony for a sexual
2 offense against a child, twelve thousand five hundred dollars
3 (\$12,500);

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

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

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

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

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

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

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

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

1 provisions or if the court provides the offender with
2 erroneous information regarding those provisions, the failure
3 to inform or the error shall not provide a basis for a writ
4 of habeas corpus.

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

19 SECTION 3. EMERGENCY.--It is necessary for the public
20 peace, health and safety that this act take effect
21 immediately. _____

