

1 HOUSE BILL 112

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

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5 and Elizabeth "Liz" Thomson and William "Bill" R. Rehm
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10 AN ACT

11 RELATING TO CRIME; INCREASING THE PENALTIES FOR SECOND DEGREE
12 MURDER AND ATTEMPTED SECOND DEGREE MURDER.
13

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

15 SECTION 1. Section 30-28-1 NMSA 1978 (being Laws 1963,
16 Chapter 303, Section 28-1) is amended to read:

17 "30-28-1. ATTEMPT TO COMMIT A FELONY.--Attempt to commit
18 a felony consists of an overt act in furtherance of and with
19 intent to commit a felony and tending but failing to effect its
20 commission.

21 Whoever commits attempt to commit a felony, upon
22 conviction thereof, shall be punished as follows:

23 A. if the crime attempted is a capital or first
24 degree felony, the person committing such attempt is guilty of
25 a second degree felony;

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1 B. if the crime attempted is a second degree
2 felony, the person committing such attempt is guilty of a third
3 degree felony;

4 C. if the crime attempted is murder in the second
5 degree, the person committing the attempted murder is guilty of
6 a third degree felony and, notwithstanding the provisions of
7 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum
8 term of imprisonment of nine years;

9 ~~[G-]~~ D. if the crime attempted is a third degree
10 felony, the person committing such attempt is guilty of a
11 fourth degree felony; and

12 ~~[D-]~~ E. if the crime attempted is a fourth degree
13 felony, the person committing such attempt is guilty of a
14 misdemeanor.

15 No person shall be sentenced for an attempt to commit a
16 misdemeanor."

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

19 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
20 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
21 DEDUCTIONS.--

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

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

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

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

5 (4) for a second degree felony resulting in
6 the death of a human being, [~~fifteen~~] eighteen years
7 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 (7) for a second degree felony, nine years
13 imprisonment;

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

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

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

20 (11) for a third degree felony, three years
21 imprisonment;

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

24 (13) for a fourth degree felony, eighteen
25 months imprisonment.

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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 or
22 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
23 imprisonment provided pursuant to the provisions of Subsection
24 A of this section, the period of parole shall be served in
25 accordance with the provisions of Section 31-21-10 NMSA 1978

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1 for the degree of felony for the basic sentence for which the
2 inmate was convicted. For the purpose of designating a period
3 of parole, a court shall not consider that the basic sentence
4 of imprisonment was suspended or deferred and that the inmate
5 served a period of imprisonment pursuant to the provisions of
6 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 (7) for a second degree felony, ten thousand

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1 dollars (\$10,000);

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

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

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

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

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

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

24 G. No later than October 31 of each year, the
25 New Mexico sentencing commission shall provide a written report

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

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2018.