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HOUSE BILL 140

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Karen C. Bash

AN ACT

RELATING TO SENTENCING; ELIMINATING CERTAIN MANDATORY MINIMUM SENTENCES.

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

SECTION 1. Section 17-2-10 NMSA 1978 (being Laws 1931, Chapter 117, Section 7, as amended) is amended to read:

"17-2-10. VIOLATION OF GAME AND FISH LAWS OR RULES-- PENALTIES.--

A. A person violating any of the provisions of Chapter 17 NMSA 1978, except for the felony provision of Section 17-2-8 NMSA 1978, or any rules adopted by the state game commission that relate to the time, extent, means or manner that game animals, birds or fish may be hunted, taken, captured, killed, possessed, sold, purchased or shipped is guilty of a misdemeanor and upon conviction shall be sentenced

1 pursuant to Section 31-19-1 NMSA 1978. In addition, the person
2 shall be sentenced to the payment of a fine in accordance with
3 the following schedule:

4 (1) for illegally taking, attempting to take,
5 killing, capturing or possessing of each deer, antelope,
6 javelina, bear or cougar during a closed season, a fine of four
7 hundred dollars (\$400);

8 (2) for illegally taking, attempting to take,
9 killing, capturing or possessing of each elk, bighorn sheep,
10 oryx, ibex or Barbary sheep, a fine of one thousand dollars
11 (\$1,000);

12 (3) for hunting big game without a proper and
13 valid license, lawfully procured, a fine of one hundred dollars
14 (\$100);

15 (4) for exceeding the bag limit of any big
16 game species, a fine of four hundred dollars (\$400);

17 (5) for attempting to exceed the bag limit of
18 any big game species by the hunting of any big game animal
19 after having tagged a similar big game species, a fine of two
20 hundred dollars (\$200);

21 (6) for signing a false statement to procure a
22 resident hunting or fishing license when the applicant is
23 residing in another state at the time of application for a
24 license, a fine of four hundred dollars (\$400);

25 (7) for using a hunting or fishing license

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1 issued to another person, a fine of one hundred dollars (\$100);

2 (8) for a violation of Section 17-2-31 NMSA
3 1978, a fine of three hundred dollars (\$300);

4 (9) for selling, offering for sale, offering
5 to purchase or purchasing any big game animal, unless otherwise
6 provided by Chapter 17 NMSA 1978, a fine of one thousand
7 dollars (\$1,000);

8 (10) for illegally taking, attempting to take,
9 killing, capturing or possessing of each jaguar, a fine of two
10 thousand dollars (\$2,000); and

11 (11) for a violation of the provisions of
12 Subsection A of Section 17-2A-3 NMSA 1978, a fine of five
13 hundred dollars (\$500).

14 B. A person convicted a second time for violating
15 any of the provisions of Chapter 17 NMSA 1978, except for the
16 felony provision of Section 17-2-8 NMSA 1978, or any rules
17 adopted by the state game commission that relate to the time,
18 extent, means or manner that game animals, birds or fish may be
19 hunted, taken, captured, killed, possessed, sold, purchased or
20 shipped is guilty of a misdemeanor and upon conviction shall be
21 sentenced pursuant to Section 31-19-1 NMSA 1978. In addition,
22 the person shall be sentenced to the payment of a fine in
23 accordance with the following schedule:

24 (1) for illegally taking, attempting to take,
25 killing, capturing or possessing of each deer, antelope,

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1 javelina, bear or cougar during a closed season, a fine of six
2 hundred dollars (\$600);

3 (2) for illegally taking, attempting to take,
4 killing, capturing or possessing of each elk, bighorn sheep,
5 oryx, ibex or Barbary sheep, a fine of one thousand five
6 hundred dollars (\$1,500);

7 (3) for hunting big game without a proper and
8 valid license, lawfully procured, a fine of four hundred
9 dollars (\$400);

10 (4) for exceeding the bag limit of any big
11 game species, a fine of six hundred dollars (\$600);

12 (5) for attempting to exceed the bag limit of
13 any big game species by the hunting of any big game animal
14 after having tagged a similar big game species, a fine of six
15 hundred dollars (\$600);

16 (6) for signing a false statement to procure a
17 resident hunting or fishing license when the applicant is
18 residing in another state at the time of application for a
19 license, a fine of six hundred dollars (\$600);

20 (7) for using a hunting or fishing license
21 issued to another person, a fine of two hundred fifty dollars
22 (\$250);

23 (8) for a violation of Section 17-2-31 NMSA
24 1978, a fine of five hundred dollars (\$500);

25 (9) for selling, offering for sale, offering

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1 to purchase or purchasing any big game animal, unless otherwise
2 provided by Chapter 17 NMSA 1978, a fine of one thousand five
3 hundred dollars (\$1,500);

4 (10) for illegally taking, attempting to take,
5 killing, capturing or possessing of each jaguar, a fine of four
6 thousand dollars (\$4,000); and

7 (11) for a violation of the provisions of
8 Subsection A of Section 17-2A-3 NMSA 1978, a fine of one
9 thousand dollars (\$1,000).

10 C. ~~[Notwithstanding the provisions of Section~~
11 ~~31-18-13 NMSA 1978]~~ A person convicted a third or subsequent
12 time for violating any of the provisions of Chapter 17 NMSA
13 1978, except for the felony provision of Section 17-2-8 NMSA
14 1978, or any rules adopted by the state game commission that
15 relate to the time, extent, means or manner that game animals,
16 birds or fish may be hunted, taken, captured, killed,
17 possessed, sold, purchased or shipped is guilty of a
18 misdemeanor and upon conviction shall be sentenced to
19 imprisonment in the county jail for a term of not less than
20 ninety days ~~[which shall not be suspended or deferred]~~. In
21 addition, the person shall be sentenced to the payment of a
22 fine in accordance with the following schedule:

23 (1) for illegally taking, attempting to take,
24 killing, capturing or possessing of each deer, antelope,
25 javelina, bear or cougar during a closed season, a fine of one

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1 thousand two hundred dollars (\$1,200);

2 (2) for illegally taking, attempting to take,
3 killing, capturing or possessing of each elk, bighorn sheep,
4 oryx, ibex or Barbary sheep, a fine of three thousand dollars
5 (\$3,000);

6 (3) for hunting big game without a proper and
7 valid license, lawfully procured, a fine of one thousand
8 dollars (\$1,000);

9 (4) for exceeding the bag limit of any big
10 game species, a fine of one thousand two hundred dollars
11 (\$1,200);

12 (5) for attempting to exceed the bag limit of
13 any big game species by the hunting of any big game animal
14 after having tagged a similar big game species, a fine of one
15 thousand dollars (\$1,000);

16 (6) for signing a false statement to procure a
17 resident hunting or fishing license when the applicant is
18 residing in another state at the time of application for a
19 license, a fine of one thousand two hundred dollars (\$1,200);

20 (7) for using a hunting or fishing license
21 issued to another person, a fine of one thousand dollars
22 (\$1,000);

23 (8) for a violation of Section 17-2-31 NMSA
24 1978, a fine of one thousand dollars (\$1,000);

25 (9) for selling, offering for sale, offering

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1 to purchase or purchasing any big game animal, unless otherwise
2 provided by Chapter 17 NMSA 1978, a fine of three thousand
3 dollars (\$3,000);

4 (10) for illegally taking, attempting to take,
5 killing, capturing or possessing of each jaguar, a fine of six
6 thousand dollars (\$6,000); and

7 (11) for a violation of the provisions of
8 Subsection A of Section 17-2A-3 NMSA 1978, a fine of two
9 thousand dollars (\$2,000).

10 D. A person who is convicted of a violation of any
11 rules adopted by the state game commission or of a violation of
12 any of the provisions of Chapter 17 NMSA 1978, except for the
13 felony provision of Section 17-2-8 NMSA 1978, for which a
14 punishment is not set forth under this section, is a
15 misdemeanor and shall be fined or imprisoned pursuant to
16 Section 31-19-1 NMSA 1978.

17 E. The provisions of this section shall not be
18 interpreted to prevent, constrain or penalize a Native American
19 for engaging in activities for religious purposes, as provided
20 in Section 17-2-14 or 17-2-41 NMSA 1978.

21 F. The provisions of this section shall not apply
22 to a landowner or lessee, or employee of either of them, who
23 kills an animal on private land, in which they have an
24 ownership or leasehold interest, that is threatening human life
25 or damaging or destroying property, including crops; provided,

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1 however, that the killing is reported to the department of game
2 and fish within twenty-four hours and before the removal of the
3 carcass of the animal killed; and provided further that all
4 actions authorized in this subsection are carried out according
5 to rules of the department."

6 SECTION 2. Section 30-9-11 NMSA 1978 (being Laws 1975,
7 Chapter 109, Section 2, as amended) is amended to read:

8 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

9 A. Criminal sexual penetration is the unlawful and
10 intentional causing of a person to engage in sexual
11 intercourse, cunnilingus, fellatio or anal intercourse or the
12 causing of penetration, to any extent and with any object, of
13 the genital or anal openings of another, whether or not there
14 is any emission.

15 B. Criminal sexual penetration does not include
16 medically indicated procedures.

17 C. Aggravated criminal sexual penetration consists
18 of all criminal sexual penetration perpetrated on a child under
19 thirteen years of age with an intent to kill or with a depraved
20 mind regardless of human life. Whoever commits aggravated
21 criminal sexual penetration is guilty of a first degree felony
22 for aggravated criminal sexual penetration.

23 D. Criminal sexual penetration in the first degree
24 consists of all criminal sexual penetration perpetrated:

25 (1) on a child under thirteen years of age; or

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1 (2) by the use of force or coercion that
2 results in great bodily harm or great mental anguish to the
3 victim.

4 Whoever commits criminal sexual penetration in the first
5 degree is guilty of a first degree felony.

6 E. Criminal sexual penetration in the second degree
7 consists of all criminal sexual penetration perpetrated:

8 (1) by the use of force or coercion on a child
9 thirteen to eighteen years of age;

10 (2) on an inmate confined in a correctional
11 facility or jail when the perpetrator is in a position of
12 authority over the inmate;

13 (3) by the use of force or coercion that
14 results in personal injury to the victim;

15 (4) by the use of force or coercion when the
16 perpetrator is aided or abetted by one or more persons;

17 (5) in the commission of any other felony; or

18 (6) when the perpetrator is armed with a
19 deadly weapon.

20 Whoever commits criminal sexual penetration in the second
21 degree is guilty of a second degree felony. Whoever commits
22 criminal sexual penetration in the second degree when the
23 victim is a child who is thirteen to eighteen years of age is
24 guilty of a second degree felony for a sexual offense against a
25 child ~~[and, notwithstanding the provisions of Section 31-18-15~~

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1 ~~NMSA 1978, shall be sentenced to a minimum term of imprisonment~~
2 ~~of three years, which shall not be suspended or deferred. The~~
3 ~~imposition of a minimum, mandatory term of imprisonment~~
4 ~~pursuant to the provisions of this subsection shall not be~~
5 ~~interpreted to preclude the imposition of sentencing~~
6 ~~enhancements pursuant to the provisions of the Criminal~~
7 ~~Sentencing Act].~~

8 F. Criminal sexual penetration in the third degree
9 consists of all criminal sexual penetration perpetrated through
10 the use of force or coercion not otherwise specified in this
11 section.

12 Whoever commits criminal sexual penetration in the third
13 degree is guilty of a third degree felony.

14 G. Criminal sexual penetration in the fourth degree
15 consists of all criminal sexual penetration:

16 (1) not defined in Subsections D through F of
17 this section perpetrated on a child thirteen to sixteen years
18 of age when the perpetrator is at least eighteen years of age
19 and is at least four years older than the child and not the
20 spouse of that child; or

21 (2) perpetrated on a child thirteen to
22 eighteen years of age when the perpetrator, who is a licensed
23 school employee, an unlicensed school employee, a school
24 contract employee, a school health service provider or a school
25 volunteer, and who is at least eighteen years of age and is at

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1 least four years older than the child and not the spouse of
2 that child, learns while performing services in or for a school
3 that the child is a student in a school.

4 Whoever commits criminal sexual penetration in the fourth
5 degree is guilty of a fourth degree felony."

6 **SECTION 3.** Section 30-9-13 NMSA 1978 (being Laws 1975,
7 Chapter 109, Section 4, as amended) is amended to read:

8 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

9 A. Criminal sexual contact of a minor is the
10 unlawful and intentional touching of or applying force to the
11 intimate parts of a minor or the unlawful and intentional
12 causing of a minor to touch one's intimate parts. For the
13 purposes of this section, "intimate parts" means the primary
14 genital area, groin, buttocks, anus or breast.

15 B. Criminal sexual contact of a minor in the second
16 degree consists of all criminal sexual contact of the unclothed
17 intimate parts of a minor perpetrated:

18 (1) on a child under thirteen years of age; or

19 (2) on a child thirteen to eighteen years of
20 age when:

21 (a) the perpetrator is in a position of
22 authority over the child and uses that authority to coerce the
23 child to submit;

24 (b) the perpetrator uses force or
25 coercion that results in personal injury to the child;

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1 (c) the perpetrator uses force or
2 coercion and is aided or abetted by one or more persons; or

3 (d) the perpetrator is armed with a
4 deadly weapon.

5 Whoever commits criminal sexual contact of a minor in the
6 second degree is guilty of a second degree felony for a sexual
7 offense against a child [~~and, notwithstanding the provisions of~~
8 ~~Section 31-18-15 NMSA 1978, shall be sentenced to a minimum~~
9 ~~term of imprisonment of three years, which shall not be~~
10 ~~suspended or deferred. The imposition of a minimum, mandatory~~
11 ~~term of imprisonment pursuant to the provisions of this~~
12 ~~subsection shall not be interpreted to preclude the imposition~~
13 ~~of sentencing enhancements pursuant to the provisions of~~
14 ~~Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978].~~

15 C. Criminal sexual contact of a minor in the third
16 degree consists of all criminal sexual contact of a minor
17 perpetrated:

18 (1) on a child under thirteen years of age; or

19 (2) on a child thirteen to eighteen years of
20 age when:

21 (a) the perpetrator is in a position of
22 authority over the child and uses this authority to coerce the
23 child to submit;

24 (b) the perpetrator uses force or
25 coercion [~~which~~] that results in personal injury to the child;

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1 (c) the perpetrator uses force or
2 coercion and is aided or abetted by one or more persons; or

3 (d) the perpetrator is armed with a
4 deadly weapon.

5 Whoever commits criminal sexual contact of a minor in the
6 third degree is guilty of a third degree felony for a sexual
7 offense against a child.

8 D. Criminal sexual contact of a minor in the fourth
9 degree consists of all criminal sexual contact:

10 (1) not defined in Subsection C of this
11 section, of a child thirteen to eighteen years of age
12 perpetrated with force or coercion; or

13 (2) of a minor perpetrated on a child thirteen
14 to eighteen years of age when the perpetrator, who is a
15 licensed school employee, an unlicensed school employee, a
16 school contract employee, a school health service provider or a
17 school volunteer, and who is at least eighteen years of age and
18 is at least four years older than the child and not the spouse
19 of that child, learns while performing services in or for a
20 school that the child is a student in a school.

21 Whoever commits criminal sexual contact in the fourth
22 degree is guilty of a fourth degree felony."

23 SECTION 4. Section 31-18-17 NMSA 1978 (being Laws 1977,
24 Chapter 216, Section 6, as amended) is amended to read:

25 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC

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1 SENTENCE.--

2 A. A person convicted of a noncapital felony in
3 this state whether within the Criminal Code or the Controlled
4 Substances Act or not who has incurred one prior felony
5 conviction that was part of a separate transaction or
6 occurrence or conditional discharge under Section 31-20-13 NMSA
7 1978 is a habitual offender and [~~his~~] the habitual offender's
8 basic sentence shall be increased by one year. [~~The sentence~~
9 ~~imposed pursuant to this subsection shall not be suspended or~~
10 ~~deferred, unless the court makes a specific finding that the~~
11 ~~prior felony conviction and the instant felony conviction are~~
12 ~~both for nonviolent felony offenses and that justice will not~~
13 ~~be served by imposing a mandatory sentence of imprisonment and~~
14 ~~that there are substantial and compelling reasons, stated on~~
15 ~~the record, for departing from the sentence imposed pursuant to~~
16 ~~this subsection.~~]

17 B. A person convicted of a noncapital felony in
18 this state whether within the Criminal Code or the Controlled
19 Substances Act or not who has incurred two prior felony
20 convictions that were parts of separate transactions or
21 occurrences or conditional discharge under Section 31-20-13
22 NMSA 1978 is a habitual offender and [~~his~~] the habitual
23 offender's basic sentence shall be increased by four years.
24 [~~The sentence imposed by this subsection shall not be suspended~~
25 ~~or deferred.~~]

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1 C. A person convicted of a noncapital felony in
2 this state whether within the Criminal Code or the Controlled
3 Substances Act or not who has incurred three or more prior
4 felony convictions that were parts of separate transactions or
5 occurrences or conditional discharge under Section 31-20-13
6 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual
7 offender's basic sentence shall be increased by eight years.
8 ~~[The sentence imposed by this subsection shall not be suspended~~
9 ~~or deferred.]~~

10 D. As used in this section, "prior felony
11 conviction" means:

12 (1) a conviction, when less than ten years
13 have passed prior to the instant felony conviction since the
14 person completed serving ~~[his]~~ the sentence or period of
15 probation or parole for the prior felony, whichever is later,
16 for a prior felony committed within New Mexico whether within
17 the Criminal Code or not, but not including a conviction for a
18 felony pursuant to the provisions of Section 66-8-102 NMSA
19 1978; or

20 (2) a prior felony, when less than ten years
21 have passed prior to the instant felony conviction since the
22 person completed serving ~~[his]~~ the sentence or period of
23 probation or parole for the prior felony, whichever is later,
24 for which the person was convicted other than an offense
25 triable by court martial if:

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1 (a) the conviction was rendered by a
2 court of another state, the United States, a territory of the
3 United States or the commonwealth of Puerto Rico;

4 (b) the offense was punishable, at the
5 time of conviction, by death or a maximum term of imprisonment
6 of more than one year; or

7 (c) the offense would have been
8 classified as a felony in this state at the time of conviction.

9 E. As used in this section, "nonviolent felony
10 offense" means application of force, threatened use of force or
11 a deadly weapon was not used by the offender in the commission
12 of the offense."

13 SECTION 5. Section 31-18-23 NMSA 1978 (being Laws 1994,
14 Chapter 24, Section 2, as amended) is amended to read:

15 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--~~[MANDATORY]~~
16 LIFE IMPRISONMENT--EXCEPTION.--

17 A. When a defendant is convicted of a third violent
18 felony, and each violent felony conviction is part of a
19 separate transaction or occurrence, and at least the third
20 violent felony conviction is in New Mexico, the defendant
21 ~~[shall]~~, in addition to the sentence imposed for the third
22 violent conviction, may be punished by a sentence of life
23 imprisonment. The life imprisonment sentence shall be subject
24 to parole pursuant to the provisions of Section 31-21-10 NMSA
25 1978.

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1 B. The sentence of life imprisonment shall be
2 imposed after a sentencing hearing, separate from the trial or
3 guilty plea proceeding resulting in the third violent felony
4 conviction, pursuant to the provisions of Section 31-18-24 NMSA
5 1978.

6 C. For the purpose of this section, a violent
7 felony conviction incurred by a defendant before the defendant
8 reaches the age of eighteen shall not count as a violent felony
9 conviction.

10 D. When a defendant has a felony conviction from
11 another state, the felony conviction shall be considered a
12 violent felony for the purposes of the Criminal Sentencing Act
13 if that crime would be considered a violent felony in New
14 Mexico.

15 E. As used in the Criminal Sentencing Act:

16 (1) "great bodily harm" means an injury to the
17 person that creates a high probability of death or that causes
18 serious disfigurement or that results in permanent loss or
19 impairment of the function of any member or organ of the body;
20 and

21 (2) "violent felony" means:

22 (a) murder in the first or second
23 degree, as provided in Section 30-2-1 NMSA 1978;

24 (b) shooting at or from a motor vehicle
25 resulting in great bodily harm, as provided in Subsection B of

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1 Section 30-3-8 NMSA 1978;

2 (c) kidnapping resulting in great bodily
3 harm inflicted upon the victim by the victim's captor, as
4 provided in Subsection B of Section 30-4-1 NMSA 1978;

5 (d) criminal sexual penetration, as
6 provided in Subsection C or D or Paragraph (5) or (6) of
7 Subsection E of Section 30-9-11 NMSA 1978; and

8 (e) robbery while armed with a deadly
9 weapon resulting in great bodily harm as provided in Section
10 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
11 1978."

12 SECTION 6. Section 31-18-25 NMSA 1978 (being Laws 1996,
13 Chapter 79, Section 1, as amended) is amended to read:

14 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
15 [~~MANDATORY~~] LIFE IMPRISONMENT--EXCEPTION.--

16 A. When a defendant is convicted of a second
17 violent sexual offense, and each violent sexual offense
18 conviction is part of a separate transaction or occurrence, and
19 at least the second violent sexual offense conviction is in New
20 Mexico, the defendant [~~shall~~], in addition to the punishment
21 imposed for the second violent sexual offense conviction, may
22 be punished by a sentence of life imprisonment. The life
23 imprisonment sentence shall be subject to parole pursuant to
24 the provisions of Section 31-21-10 NMSA 1978.

25 B. Notwithstanding the provisions of Subsection A

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1 of this section, when a defendant is convicted of a second
2 violent sexual offense, and each violent sexual offense
3 conviction is part of a separate transaction or occurrence, and
4 the victim of each violent sexual offense was less than
5 thirteen years of age at the time of the offense, and at least
6 the second violent sexual offense conviction is in New Mexico,
7 the defendant [~~shall~~] may be punished by a sentence of life
8 imprisonment without the possibility of parole.

9 C. The sentence of life imprisonment shall be
10 imposed after a sentencing hearing, separate from the trial or
11 guilty plea proceeding resulting in the second violent sexual
12 offense conviction, pursuant to the provisions of Section
13 31-18-26 NMSA 1978.

14 D. For the purposes of this section, a violent
15 sexual offense conviction incurred by a defendant before the
16 defendant reaches the age of eighteen shall not count as a
17 violent sexual offense conviction.

18 E. When a defendant has a felony conviction from
19 another state, the felony conviction shall be considered a
20 violent sexual offense for the purposes of the Criminal
21 Sentencing Act if the crime would be considered a violent
22 sexual offense in New Mexico.

23 F. As used in the Criminal Sentencing Act, "violent
24 sexual offense" means:

25 (1) criminal sexual penetration in the first

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1 degree, as provided in Subsection D of Section 30-9-11 NMSA
2 1978; or

3 (2) criminal sexual penetration in the second
4 degree, as provided in Subsection E of Section 30-9-11 NMSA
5 1978."

6 SECTION 7. Section 31-20-3 NMSA 1978 (being Laws 1963,
7 Chapter 303, Section 29-15, as amended) is amended to read:

8 "31-20-3. ORDER DEFERRING OR SUSPENDING SENTENCE--
9 DIAGNOSTIC COMMITMENT.--Upon entry of a judgment of conviction
10 of any crime not constituting a capital [~~or first degree~~]
11 felony, any court having jurisdiction, when it is satisfied
12 that the ends of justice and the best interest of the public as
13 well as the defendant will be served thereby, may either:

14 A. enter an order deferring the imposition of
15 sentence;

16 B. sentence the defendant and enter an order
17 suspending in whole or in part the execution of the sentence;
18 or

19 C. commit the convicted person, if convicted of a
20 felony and not committed for diagnostic purposes within the
21 twelve-month period immediately preceding that conviction, to
22 the [~~department of~~] corrections department for an indeterminate
23 period not to exceed sixty days for purposes of diagnosis, with
24 direction that the court be given a report when the diagnosis
25 is complete as to what disposition appears best when the

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1 interest of the public and the individual are evaluated."

2 SECTION 8. Section 40-13-6 NMSA 1978 (being Laws 1987,
3 Chapter 286, Section 6, as amended) is amended to read:

4 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
5 NOT EXCLUSIVE.--

6 A. An order of protection granted under the Family
7 Violence Protection Act shall be filed with the clerk of the
8 court, and a copy shall be sent by the clerk to the local law
9 enforcement agency. The order shall be personally served upon
10 the restrained party, unless the restrained party or the
11 restrained party's attorney was present at the time the order
12 was issued. The order shall be filed and served without cost
13 to the protected party.

14 B. A local law enforcement agency receiving an
15 order of protection from the clerk of the court that was issued
16 under the Family Violence Protection Act shall have the order
17 entered in the national crime information center's order of
18 protection file within seventy-two hours of receipt. This does
19 not include temporary orders of protection entered pursuant to
20 the provisions of Section 40-13-4 NMSA 1978.

21 C. An order of protection granted by the court
22 involving custody or support shall be effective for a fixed
23 period of time not to exceed six months. The order may be
24 extended for good cause upon motion of the protected party for
25 an additional period of time not to exceed six months.

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1 Injunctive orders shall continue until modified or rescinded
2 upon motion by either party or until the court approves a
3 subsequent consent agreement entered into by the parties.

4 D. A peace officer may arrest without a warrant and
5 take into custody a restrained party whom the peace officer has
6 probable cause to believe has violated an order of protection
7 that is issued pursuant to the Family Violence Protection Act
8 or entitled to full faith and credit.

9 E. A restrained party convicted of violating an
10 order of protection granted by a court under the Family
11 Violence Protection Act is guilty of a misdemeanor and shall be
12 sentenced in accordance with Section 31-19-1 NMSA 1978. ~~[Upon~~
13 ~~a second or subsequent conviction, an offender shall be~~
14 ~~sentenced to a jail term of not less than seventy-two~~
15 ~~consecutive hours that shall not be suspended, deferred or~~
16 ~~taken under advisement.]~~

17 F. In addition to any other punishment provided in
18 the Family Violence Protection Act, the court shall order a
19 person convicted to make full restitution to the party injured
20 by the violation of an order of protection and shall order the
21 person convicted to participate in and complete a program of
22 professional counseling, at the person's own expense, if
23 possible.

24 G. In addition to charging the person with
25 violating an order of protection, a peace officer shall file

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underscoring material = new
~~[bracketed material] = delete~~

1 all other possible criminal charges arising from an incident of
2 domestic abuse when probable cause exists.

3 H. The remedies provided in the Family Violence
4 Protection Act are in addition to any other civil or criminal
5 remedy available to the protected party or the state."

6 SECTION 9. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2021.

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