

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 316

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
INCREASING THE PENALTY FOR A FELON IN POSSESSION OF A FIREARM
OR DESTRUCTIVE DEVICE TO FIVE YEARS IMPRISONMENT; ADDING A NEW
CRIME OF FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE
FOR A SECOND OR SUBSEQUENT OFFENSE AND A NEW PENALTY OF NINE
YEARS IMPRISONMENT; INCREASING THE PENALTY FOR A SERIOUS
VIOLENT FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE
TO NINE YEARS IMPRISONMENT.

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

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,
Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

A. It is unlawful for the following persons to

.228093.1

underscored material = new
[bracketed material] = delete

1 receive, transport or possess a firearm or destructive device
2 in this state:

3 (1) a felon;

4 (2) a person subject to an order of protection
5 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

6 (3) a person convicted of any of the following
7 crimes:

8 (a) battery against a household member
9 pursuant to Section 30-3-15 NMSA 1978;

10 (b) criminal damage to property of a
11 household member pursuant to Section 30-3-18 NMSA 1978;

12 (c) a first offense of stalking pursuant
13 to Section 30-3A-3 NMSA 1978; or

14 (d) a crime listed in 18 U.S.C. 921.

15 B. A felon found in possession of a firearm or
16 destructive device shall be guilty of a third degree felony for
17 possession of a firearm or destructive device by a felon. A
18 felon found in possession of a firearm or destructive device
19 for a second or subsequent offense shall be guilty of a second
20 degree felony.

21 C. A serious violent felon that is found to be in
22 possession of a firearm or destructive device shall be guilty
23 of a [third] second degree felony [~~and notwithstanding the~~
24 ~~provisions of Section 31-18-15 NMSA 1978, shall be sentenced to~~
25 ~~a basic term of six years imprisonment].~~

.228093.1

1 D. Any person subject to an order of protection
2 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted
3 of a crime listed in Paragraph (3) of Subsection A of this
4 section who receives, transports or possesses a firearm or
5 destructive device is guilty of a misdemeanor.

6 E. As used in this section:

7 (1) except as provided in Paragraph (2) of
8 this subsection, "destructive device" means:

9 (a) any explosive, incendiary or poison
10 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
11 of more than four ounces; 4) missile having an explosive or
12 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
13 similar device;

14 (b) any type of weapon by whatever name
15 known that will, or that may be readily converted to, expel a
16 projectile by the action of an explosive or other propellant,
17 the barrel or barrels of which have a bore of more than one-
18 half inch in diameter, except a shotgun or shotgun shell that
19 is generally recognized as particularly suitable for sporting
20 purposes; or

21 (c) any combination of parts either
22 designed or intended for use in converting any device into a
23 destructive device as defined in this paragraph and from which
24 a destructive device may be readily assembled;

25 (2) the term "destructive device" does not

.228093.1

1 include any device that is neither designed nor redesigned for
2 use as a weapon or any device, although originally designed for
3 use as a weapon, that is redesigned for use as a signaling,
4 pyrotechnic, line throwing, safety or similar device;

5 (3) "felon" means a person convicted of a
6 felony offense by a court of the United States or of any state
7 or political subdivision thereof and:

8 (a) less than ten years have passed
9 since the person completed serving a sentence or period of
10 probation for the felony conviction, whichever is later;

11 (b) the person has not been pardoned for
12 the felony conviction by the proper authority; and

13 (c) the person has not received a
14 deferred sentence;

15 (4) "firearm" means any weapon that will or is
16 designed to or may readily be converted to expel a projectile
17 by the action of an explosion or the frame or receiver of any
18 such weapon; and

19 (5) "serious violent felon" means a person
20 convicted of an offense enumerated in Subparagraphs (a) through
21 (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA
22 1978; provided that:

23 (a) less than ten years have passed
24 since the person completed serving a sentence or a period of
25 probation for the felony conviction, whichever is later;

.228093.1

1 (b) the person has not been pardoned for
2 the felony conviction by the proper authority; and

3 (c) the person has not received a
4 deferred sentence and completed the total term of deferment as
5 provided in Section 31-20-9 NMSA 1978."

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

8 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
9 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
10 DEDUCTIONS.--

11 A. As used in a statute that establishes a
12 noncapital felony, the following defined felony classifications
13 and associated basic sentences of imprisonment are as follows:

FELONY CLASSIFICATION	BASIC SENTENCE
first degree felony resulting in the death of a child	life imprisonment
first degree felony for aggravated criminal sexual penetration	life imprisonment
first degree felony	eighteen years imprisonment
second degree felony resulting in the death of a human being	fifteen years imprisonment
second degree felony for a	

.228093.1

underscored material = new
[bracketed material] = delete

1 sexual offense against a
2 child fifteen years imprisonment
3 second degree felony for
4 sexual exploitation of
5 children twelve years imprisonment
6 second degree felony nine years imprisonment
7 third degree felony resulting
8 in the death of a human being six years imprisonment
9 third degree felony for a
10 sexual offense against a
11 child six years imprisonment
12 third degree felony for sexual
13 exploitation of children eleven years imprisonment
14 third degree felony for possession
15 of a firearm or destructive
16 device by a felon five years imprisonment
17 third degree felony three years imprisonment
18 fourth degree felony for
19 sexual exploitation of
20 children ten years imprisonment
21 fourth degree felony eighteen months imprisonment.

22 B. The appropriate basic sentence of imprisonment
23 shall be imposed upon a person convicted and sentenced pursuant
24 to Subsection A of this section, unless the court alters the
25 sentence pursuant to the provisions of the Criminal Sentencing

.228093.1

1 Act.

2 C. A period of parole shall be imposed only for
3 felony convictions wherein a person is sentenced to imprisonment
4 of more than one year, unless the parties to a proceeding agree
5 that a period of parole should be imposed. If a period of parole
6 is imposed, the court shall include in the judgment and sentence
7 of each person convicted and sentenced to imprisonment in a
8 corrections facility designated by the corrections department
9 authority for a period of parole to be served in accordance with
10 the provisions of Section 31-21-10 NMSA 1978 after the completion
11 of any actual time of imprisonment and authority to require, as a
12 condition of parole, the payment of the costs of parole services
13 and reimbursement to a law enforcement agency or local crime
14 stopper program in accordance with the provisions of that
15 section. If imposed, the period of parole shall be deemed to be
16 part of the sentence of the convicted person in addition to the
17 basic sentence imposed pursuant to Subsection A of this section
18 together with alterations, if any, pursuant to the provisions of
19 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 A
24 of this section, the period of parole shall be served in
25 accordance with the provisions of Section 31-21-10 NMSA 1978 for

.228093.1

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

7 E. The court may, in addition to the imposition of a
8 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 thousand
16 dollars (\$15,000);

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

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

23 G. No later than October 31 of each year, the
24 New Mexico sentencing commission shall provide a written report
25 to the secretary of corrections, all New Mexico criminal court

.228093.1

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

11 SECTION 3. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2024.