

1 SENATE BILL 96

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024**

3 INTRODUCED BY

4 Antonio Maestas and Cynthia Borrego

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTY FOR
12 ATTEMPTED MURDER IN THE SECOND DEGREE; INCREASING THE PENALTY
13 FOR SECOND DEGREE MURDER TO EIGHTEEN YEARS.

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

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

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

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

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

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1 a second degree felony;

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

5 C. if the crime attempted is murder in the second
6 degree, the person committing the attempted murder is guilty of
7 a third degree felony and, notwithstanding the provisions of
8 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
9 is nine years;

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

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

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

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

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1	FELONY CLASSIFICATION	BASIC SENTENCE
2	first degree felony	
3	resulting in the death	
4	of a child	life imprisonment
5	first degree felony for	
6	aggravated criminal sexual	
7	penetration	life imprisonment
8	first degree felony	eighteen years imprisonment
9	second degree felony	
10	resulting in the death of	
11	a human being	[fifteen] <u>eighteen</u> years
12		imprisonment
13	second degree felony for a	
14	sexual offense against a	
15	child	fifteen years imprisonment
16	second degree felony for	
17	sexual exploitation of	
18	children	twelve years imprisonment
19	second degree felony	nine years imprisonment
20	third degree felony resulting	
21	in the death of a human being	six years imprisonment
22	third degree felony for a	
23	sexual offense against a	
24	child	six years imprisonment
25	third degree felony for sexual	

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1 exploitation of children eleven years imprisonment
2 third degree felony three years imprisonment
3 fourth degree felony for
4 sexual exploitation of
5 children ten years imprisonment
6 fourth degree felony eighteen months imprisonment.

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

12 C. A period of parole shall be imposed only for
13 felony convictions wherein a person is sentenced to
14 imprisonment of more than one year, unless the parties to a
15 proceeding agree that a period of parole should be imposed. If
16 a period of parole is imposed, the court shall include in the
17 judgment and sentence of each person convicted and sentenced to
18 imprisonment in a corrections facility designated by the
19 corrections department authority for a period of parole to be
20 served in accordance with the provisions of Section 31-21-10
21 NMSA 1978 after the completion of any actual time of
22 imprisonment and authority to require, as a condition of
23 parole, the payment of the costs of parole services and
24 reimbursement to a law enforcement agency or local crime
25 stopper program in accordance with the provisions of that

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1 section. If imposed, the period of parole shall be deemed to
2 be part of the sentence of the convicted person in addition to
3 the basic sentence imposed pursuant to Subsection A of this
4 section together with alterations, if any, pursuant to the
5 provisions of the Criminal Sentencing Act.

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

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

20 (1) for a first degree felony resulting in the
21 death of a child, seventeen thousand five hundred dollars
22 (\$17,500);

23 (2) for a first degree felony for aggravated
24 criminal sexual penetration, seventeen thousand five hundred
25 dollars (\$17,500);

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

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

6 (5) for a second degree felony for a sexual
7 offense against a child, twelve thousand five hundred dollars
8 (\$12,500);

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

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

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

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

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

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

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

23 F. When the court imposes a sentence of
24 imprisonment for a felony offense, the court shall indicate
25 whether or not the offense is a serious violent offense as

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1 defined in Section 33-2-34 NMSA 1978. The court shall inform
2 an offender that the offender's sentence of imprisonment is
3 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
4 and 33-2-38 NMSA 1978. If the court fails to inform an
5 offender that the offender's sentence is subject to those
6 provisions or if the court provides the offender with erroneous
7 information regarding those provisions, the failure to inform
8 or the error shall not provide a basis for a writ of habeas
9 corpus.

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

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