

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

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

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

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

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

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

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

.218341.1

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

underscored material = new
[bracketed material] = delete

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;

.218341.1

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

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.

.218341.1

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

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. A period of parole shall be imposed only for
7 felony convictions wherein a person is sentenced to
8 imprisonment of more than one year, unless the parties to a
9 proceeding agree that a period of parole should be imposed. If
10 a period of parole is imposed, the court shall include in the
11 judgment and 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. If imposed, the period of parole shall be deemed to
21 be part of the sentence of the convicted person in addition to
22 the basic sentence imposed pursuant to Subsection A of this
23 section together with alterations, if any, pursuant to the
24 provisions of the Criminal Sentencing Act.

25 D. When a court imposes a sentence of imprisonment

.218341.1

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

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

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

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

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

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

25 (5) for a second degree felony for a sexual

.218341.1

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

1 offense against a child, twelve thousand five hundred dollars
2 (\$12,500);

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

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

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

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

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

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

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

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

.218341.1

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

1 information regarding those provisions, the failure to inform
2 or the error shall not provide a basis for a writ of habeas
3 corpus.

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

17 SECTION 3. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2021.