



Law Offices of the Public Defender

Jorge A. Alvarado
Chief Public Defender

Bennett J. Baur
Deputy Chief Public Defender

June 25, 2014

The Mechanism of Sentencing and Mandatory Minimum Sentencing in New Mexico and the Problems and Costs Entailed by Mandatory Minimum Sentencing

Materials for the Criminal Justice Reform Subcommittee of the Courts, Corrections and
Justice Committee of the New Mexico Legislature

Submitted by:
Kim Chavez Cook
LOPD Lobbyist
Kim.chavezcook@lopnm.us
(505) 476-0738, direct
(505) 795-2074, cell

Sentencing Variables

- Mandatory minima & max **basic** sentences
 - For the listed charge as well as included offenses
- Eligibility for “good time” (Earned Meritorious Deductions)
 - most offenses are eligible for “day-for-day” good time (30 days a month accrual)
 - SVOs are only eligible for 4 days per month
 - “discretionary” offenses must be found to be SVOs by the sentencing judge based on the specific factual circumstances of its commission in a particular case
 - First-degree murder is ineligible
 - Sentences served in county jail are only eligible if the sentencing judge expressly orders it in the Judgment and Sentence; factors for actually receiving it are not clearly defined
- Potential for suspension or deferment
- Potential for concurrent (rather than consecutive) sentences
- Individual charge enhancements (use of a firearm)
- Enhancements based on criminal history
 - basic habitual offender – any prior felonies
 - 3+ violent felonies
 - 2+ violent sexual offenses
 - Self-enhancing crimes – based on priors of that particular charge*
 - Sometimes these simply change the sentence itself; sometimes they change the degree of the crime, which automatically increases the basic sentence; sometimes, as with DWI, it does both.
- Mandatory parole and/or probation
 - 1 or 2 years parole for most felonies
 - 5-20 indeterminate parole for certain sex offenses, see § 31-21-10
- Potential for collateral consequences
 - SORNA registration
 - Loss of regulatory privileges (e.g., driver’s license)
 - Loss of 2nd Amendment rights
 - Loss of the right to vote
 - Restitution
 - Job & educational prospects
 - Etc.

MANDATORY SENTENCES

Mandatory Basic Sentences

Capital Felonies § 31-18-4	life imprisonment (with or without parole after 30, <i>see</i> NMSA 1978, § 31-20A-2)	<ul style="list-style-type: none"> • 1st-degree murder <ul style="list-style-type: none"> ○ § 30-2-1-(A)
First-degree felony resulting in death of a child § 31-18-15(A)(1)	life imprisonment (parole eligible after 30)	<ul style="list-style-type: none"> • Intentional child abuse (under 12) resulting in death <ul style="list-style-type: none"> ○ § 30-6-1(H)
First degree felony for aggravated criminal sexual penetration § 31-18-15(A)(2)	life imprisonment (parole eligible after 30)	<ul style="list-style-type: none"> • Aggravated CSP (< 13 + intent) <ul style="list-style-type: none"> ○ § 30-9-11(C)
All other 1st-degree Felonies	18 years imprisonment	<ul style="list-style-type: none"> • <i>First-degree Kidnapping</i>, § 30-4-1, SVO • <i>Any child abuse – GBH</i>, § 30-6-1(E) • <i>Negligent child abuse – death</i>, § 30-6-1(F) • <i>Intentional child abuse (12-18) – death</i>, § 30-6-1(G) • <i>Sex exploit child < 13 by prostitution</i>, § 30-6A-4(A) • <i>1st-degree CSP (<13 / force or coercion + GBH)</i>, § 30-9-11(D) • <i>Robbery, D.W., 2nd+ offense</i>, § 30-16-2, SVO • <i>Unlawful Rescue (capital convict)</i>, § 30-22-7 • <i>Trafficking drugs (manufacture, distribution, or possession with intent), either 2nd+ offense or in a school zone</i>, § 30-31-20 • <i>Distributing non-marijuana drugs to a minor, 2nd+ offense</i>, § 30-31-21 • <i>Distributing certain drugs /counterfeit drugs (> 100 lbs, 2nd+ offense, in a school zone)</i>, § 30-31-22(D)(1)(d) & (D)(2)(b) • <i>Human trafficking (< 13)</i>, § 30-52-1(C)(2)

Particular offenses carrying mandatory minima

OFFENSE	MANDATORY SENTENCE	OTHER SENTENCING
2nd-degree CSP (13-18) § 30-9-11(E)	3 years (up to 15 years)	SVO
2nd-degree CSCM § 30-9-13(B)	3 years (up to 15 years)	SVO

DWI – 2nd § 66-8-102(F)(1)	96 consecutive hours (up to 364 days)	+ mandatory 48 hours community service; treatment
DWI – 3rd § 66-8-102(F)(2)	30 days (up to 364 days)	+ mandatory 96 hours community service; treatment
DWI – 4th § 66-8-102(G)	6 months (up to 18 months)	4th-degree Felony
DWI – 5th § 66-8-102(H)	1 year (up to 2 years)	4th-degree Felony
DWI – 6th § 66-8-102(I)	18 months (up to 30 months)	3rd-degree Felony
DWI – 7th + § 66-8-102(J)	2 years (up to 3 years)	3rd-degree Felony

MANDATORY SENTENCES: ENHANCEMENTS

Firearm used in a felony § 31-18-16	<ul style="list-style-type: none"> • Basic sentence + 1 year; shall be first year served (not concurrent) • 2nd+ felony with a firearm = basic sentence + 3 years; first 3 years served 	
Habitual Offender § 31-18-17	<ul style="list-style-type: none"> • 1 prior: basic + 1 year (can be suspended if both nonviolent/ interests of justice) • 2 priors: basic + 4 years • 3+ priors: basic + 8 years <p>* Every felony in present case can be separately enhanced, concurrently or consecutively</p>	If 1-year gets suspended at 2 nd felony sentencing, still a useable prior (still have “2 priors” the next time). SVO status tracks the underlying felony that is being enhanced. HOE cannot run concurrent to underlying.
“Habitual” Violent Felon § 31-18-23	<ul style="list-style-type: none"> • 3rd violent felony conviction = mandatory life imprisonment (parole eligible after 30) 	*Priors committed as a minor don’t count *Violent felonies listed, § 31-18-23(E)(2)
Two-time violent sexual offense § 31-18-25	<ul style="list-style-type: none"> • 2nd violent sexual offense conviction = mandatory life (parole eligible after 30) 	*Priors committed as a minor don’t count *Violent sexual offenses listed, § 31-18-25(F)
Homicide or GBH by vehicle/DWI, prior DWI in 10 years § 66-8-101	<ul style="list-style-type: none"> • Basic 3rd-degree felony sentence enhanced by 4 years per prior DWI 	