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HOUSE BILL 464

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTIES FOR
SECOND DEGREE MURDER, VOLUNTARY MANSLAUGHTER AND INVOLUNTARY
MANSLAUGHTER; MAKING APPROPRIATIONS.

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

SECTION 1. Section 30-2-1 NMSA 1978 (being Laws 1963,
Chapter 303, Section 2-1, as amended) is amended to read:

"30-2-1. MURDER.--

A. Murder in the first degree is the killing of one
human being by another without lawful justification or excuse,
by any of the means with which death may be caused:

(1) by any kind of willful, deliberate and
premeditated killing;

(2) in the commission of or attempt to commit
any felony; or

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1 (3) by any act greatly dangerous to the lives
2 of others, indicating a depraved mind regardless of human life.

3 Whoever commits murder in the first degree is guilty of a
4 capital felony.

5 B. Unless [~~he~~] a person is acting upon sufficient
6 provocation, upon a sudden quarrel or in the heat of passion, a
7 person who kills another human being without lawful
8 justification or excuse commits murder in the second degree if
9 in performing the acts [~~which~~] that cause the death [~~he~~] the
10 person knows that such acts create a strong probability of
11 death or great bodily harm to that individual or another.

12 Murder in the second degree is a lesser included offense
13 of the crime of murder in the first degree.

14 Whoever commits murder in the second degree is guilty of a
15 second degree felony [~~resulting in the death of a human being~~]
16 for murder."

17 SECTION 2. Section 30-2-3 NMSA 1978 (being Laws 1963,
18 Chapter 303, Section 2-3, as amended) is amended to read:

19 "30-2-3. MANSLAUGHTER.--Manslaughter is the unlawful
20 killing of a human being without malice.

21 A. Voluntary manslaughter consists of manslaughter
22 committed upon a sudden quarrel or in the heat of passion.

23 Whoever commits voluntary manslaughter is guilty of a
24 third degree felony [~~resulting in the death of a human being~~]
25 for voluntary manslaughter.

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1 B. Involuntary manslaughter consists of
2 manslaughter committed in the commission of an unlawful act not
3 amounting to felony, or in the commission of a lawful act
4 [~~which~~] that might produce death in an unlawful manner or
5 without due caution and circumspection.

6 Whoever commits involuntary manslaughter is guilty of a
7 fourth degree felony for involuntary manslaughter."

8 SECTION 3. Section 31-18-15 NMSA 1978 (being Laws 1977,
9 Chapter 216, Section 4, as amended) is amended to read:

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

13 A. If a person is convicted of a noncapital felony,
14 the basic sentence of imprisonment is as follows:

15 (1) for a first degree felony resulting in the
16 death of a child, life imprisonment;

17 (2) for a first degree felony for aggravated
18 criminal sexual penetration, life imprisonment;

19 (3) for a first degree felony, eighteen years
20 imprisonment;

21 (4) for a second degree felony [~~resulting in~~
22 ~~the death of a human being, fifteen~~] for murder, twenty years
23 imprisonment;

24 (5) for a second degree felony for a sexual
25 offense against a child, fifteen years imprisonment;

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1 (6) for a second degree felony, nine years
2 imprisonment;

3 (7) for a third degree felony for voluntary
4 manslaughter, ten years imprisonment;

5 [~~(7)~~] (8) for a third degree felony resulting
6 in the death of a human being, six years imprisonment;

7 [~~(8)~~] (9) for a third degree felony for a
8 sexual offense against a child, six years imprisonment;

9 [~~(9)~~] (10) for a third degree felony, three
10 years imprisonment; [~~or~~]

11 (11) for a fourth degree felony for
12 involuntary manslaughter, three years imprisonment; or

13 [~~(10)~~] (12) for a fourth degree felony,
14 eighteen months imprisonment.

15 B. The appropriate basic sentence of imprisonment
16 shall be imposed upon a person convicted and sentenced pursuant
17 to Subsection A of this section, unless the court alters the
18 sentence pursuant to the provisions of the Criminal Sentencing
19 Act.

20 C. The court shall include in the judgment and
21 sentence of each person convicted and sentenced to imprisonment
22 in a corrections facility designated by the corrections
23 department authority for a period of parole to be served in
24 accordance with the provisions of Section 31-21-10 NMSA 1978
25 after the completion of any actual time of imprisonment and

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1 authority to require, as a condition of parole, the payment of
2 the costs of parole services and reimbursement to a law
3 enforcement agency or local crime stopper program in accordance
4 with the provisions of that section. The period of parole
5 shall be deemed to be part of the sentence of the convicted
6 person in addition to the basic sentence imposed pursuant to
7 Subsection A of this section together with alterations, if any,
8 pursuant to the provisions of the Criminal Sentencing Act.

9 D. When a court imposes a sentence of imprisonment
10 pursuant to the provisions of Section 31-18-15.1, 31-18-16
11 [~~31-18-16.1~~] or 31-18-17 NMSA 1978 and suspends or defers the
12 basic sentence of imprisonment provided pursuant to the
13 provisions of Subsection A of this section, the period of
14 parole shall be served in accordance with the provisions of
15 Section 31-21-10 NMSA 1978 for the degree of felony for the
16 basic sentence for which the inmate was convicted. For the
17 purpose of designating a period of parole, a court shall not
18 consider that the basic sentence of imprisonment was suspended
19 or deferred and that the inmate served a period of imprisonment
20 pursuant to the provisions of the Criminal Sentencing Act.

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

23 (1) for a first degree felony resulting in the
24 death of a child, seventeen thousand five hundred dollars
25 (\$17,500);

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

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

6 (4) for a second degree felony [~~resulting in~~
7 ~~the death of a human being~~] for murder, twelve thousand five
8 hundred dollars (\$12,500);

9 (5) for a second degree felony for a sexual
10 offense against a child, twelve thousand five hundred dollars
11 (\$12,500);

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

14 (7) for a third degree felony for voluntary
15 manslaughter, ten thousand dollars (\$10,000);

16 [~~(7)~~] (8) for a third degree felony resulting
17 in the death of a human being, five thousand dollars (\$5,000);

18 [~~(8)~~] (9) for a third degree felony for a
19 sexual offense against a child, five thousand dollars (\$5,000);
20 or

21 [~~(9)~~] (10) for a third degree felony, a fourth
22 degree felony for involuntary manslaughter or a fourth degree
23 felony, five thousand dollars (\$5,000).

24 F. When the court imposes a sentence of
25 imprisonment for a felony offense, the court shall indicate

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

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

24 SECTION 4. APPROPRIATIONS.--

25 A. One million eight hundred thousand dollars

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1 (\$1,800,000) is appropriated from the general fund to the
2 following entities for the following amounts for expenditure in
3 fiscal year 2012 to cover the increase in the costs of
4 operations as a result of the increased penalties in this act:

5 (1) one hundred thousand dollars (\$100,000) to
6 the first judicial district attorney;

7 (2) one hundred thousand dollars (\$100,000) to
8 the second judicial district attorney;

9 (3) one hundred thousand dollars (\$100,000) to
10 the third judicial district attorney;

11 (4) fifty thousand dollars (\$50,000) to the
12 fourth judicial district attorney;

13 (5) fifty thousand dollars (\$50,000) to the
14 fifth judicial district attorney;

15 (6) fifty thousand dollars (\$50,000) to the
16 sixth judicial district attorney;

17 (7) fifty thousand dollars (\$50,000) to the
18 seventh judicial district attorney;

19 (8) fifty thousand dollars (\$50,000) to the
20 eighth judicial district attorney;

21 (9) fifty thousand dollars (\$50,000) to the
22 ninth judicial district attorney;

23 (10) fifty thousand dollars (\$50,000) to the
24 tenth judicial district attorney;

25 (11) fifty thousand dollars (\$50,000) to the

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1 eleventh judicial district attorney, division one;
2 (12) fifty thousand dollars (\$50,000) to the
3 eleventh judicial district attorney, division two;
4 (13) fifty thousand dollars (\$50,000) to the
5 twelfth judicial district attorney;
6 (14) one hundred thousand dollars (\$100,000)
7 to the thirteenth judicial district attorney; and
8 (15) nine hundred thousand dollars (\$900,000)
9 to the public defender department.

10 B. Any unexpended or unencumbered balance remaining
11 at the end of fiscal year 2012 shall revert to the general
12 fund.

13 SECTION 5. EFFECTIVE DATE.--The effective date of the
14 provisions of this act is July 1, 2011.