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HOUSE BILL 597

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL JUSTICE; CREATING THE CRIME OF MUTILATION;
PROVIDING PENALTIES; INCREASING THE PENALTY FOR MURDER IN THE
SECOND DEGREE; INCREASING THE PENALTY FOR VOLUNTARY
MANSLAUGHTER; DECREASING THE PENALTY FOR POSSESSION WITH INTENT
TO DISTRIBUTE.

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

SECTION 1. A new Section 30-3-5.1 NMSA 1978 is enacted to
read:

"30-3-5.1. [NEW MATERIAL] MUTILATION.--

A. Mutilation consists of inflicting an injury to a
person that causes permanent disfigurement or loss or
impairment of the functions of any member or organ of the body.

B. Whoever commits mutilation is guilty of a third
degree felony and shall be sentenced, notwithstanding the

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1 provisions of Section 31-18-15 NMSA 1978, to a basic sentence
2 of imprisonment of six years."

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

5 "30-2-1. MURDER.--

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

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

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

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

15 Whoever commits murder in the first degree is guilty of a
16 capital felony.

17 B. Unless ~~[he]~~ a person is acting upon sufficient
18 provocation, upon a sudden quarrel or in the heat of passion, a
19 person who kills another human being without lawful
20 justification or excuse commits murder in the second degree if
21 in performing the acts ~~[which]~~ that cause the death ~~[he]~~ the
22 person knows that such acts create a strong probability of
23 death or great bodily harm to that individual or another.

24 Murder in the second degree is a lesser included offense
25 of the crime of murder in the first degree.

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1 Whoever commits murder in the second degree is guilty of a
2 second degree felony resulting in the death of a human being,
3 and shall be sentenced, notwithstanding the provisions of
4 Section 31-18-15 NMSA 1978, to a basic sentence of imprisonment
5 of twenty years."

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

8 "30-2-3. MANSLAUGHTER.--Manslaughter is the unlawful
9 killing of a human being without malice.

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

12 Whoever commits voluntary manslaughter is guilty of a
13 third degree felony resulting in the death of a human being,
14 and shall be sentenced, notwithstanding the provisions of
15 Section 31-18-15 NMSA 1978, to a basic sentence of imprisonment
16 of ten years.

17 B. Involuntary manslaughter consists of
18 manslaughter committed in the commission of an unlawful act not
19 amounting to felony, or in the commission of a lawful act which
20 might produce death in an unlawful manner or without due
21 caution and circumspection.

22 Whoever commits involuntary manslaughter is guilty of a
23 fourth degree felony."

24 SECTION 4. Section 30-31-20 NMSA 1978 (being Laws 1972,
25 Chapter 84, Section 20, as amended) is amended to read:

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1 "30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
2 VIOLATION.--

3 A. As used in the Controlled Substances Act,
4 "traffic" means the:

5 (1) manufacture of a controlled substance
6 enumerated in Schedules I through V or a controlled substance
7 analog as defined in Subsection W of Section 30-31-2 NMSA 1978;

8 (2) distribution, sale, barter or giving away
9 of:

10 (a) a controlled substance enumerated in
11 Schedule I or II that is a narcotic drug;

12 (b) a controlled substance analog of a
13 controlled substance enumerated in Schedule I or II that is a
14 narcotic drug; or

15 (c) methamphetamine, its salts, isomers
16 and salts of isomers; or

17 (3) possession with intent to distribute:

18 (a) a controlled substance enumerated in
19 Schedule I or II that is a narcotic drug;

20 (b) controlled substance analog of a
21 controlled substance enumerated in Schedule I or II that is a
22 narcotic drug; or

23 (c) methamphetamine, its salts, isomers
24 and salts of isomers.

25 B. Except as authorized by the Controlled

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1 Substances Act, it is unlawful for a person to intentionally
2 traffic.

3 C. A person who violates [~~this~~] Subsection B of
4 this section, excluding possession with intent to distribute,
5 is:

6 (1) for the first offense, guilty of a second
7 degree felony and shall be sentenced pursuant to the provisions
8 of Section 31-18-15 NMSA 1978; and

9 (2) for the second and subsequent offenses,
10 guilty of a first degree felony and shall be sentenced pursuant
11 to the provisions of Section 31-18-15 NMSA 1978.

12 D. A person who violates Subsection B of this
13 section for possession with intent to distribute is:

14 (1) for the first offense, guilty of a third
15 degree felony; and

16 (2) for the second and subsequent offenses,
17 guilty of a second degree felony.

18 [~~G.~~] E. A person who knowingly violates Subsection
19 B of this section within a drug-free school zone excluding
20 private property residentially zoned or used primarily as a
21 residence is guilty of a first degree felony and shall be
22 sentenced pursuant to the provisions of Section 31-18-15 NMSA
23 1978."

24 SECTION 5. Section 33-2-34 NMSA 1978 (being Laws 1999,
25 Chapter 238, Section 1, as amended) is amended to read:

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1 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS

2 DEDUCTIONS.--

3 A. To earn meritorious deductions, a prisoner
4 confined in a correctional facility designated by the
5 corrections department must be an active participant in programs
6 recommended for the prisoner by the classification supervisor
7 and approved by the warden or the warden's designee.

8 Meritorious deductions shall not exceed the following amounts:

9 (1) for a prisoner confined for committing a
10 serious violent offense, up to a maximum of four days per month
11 of time served;

12 (2) for a prisoner confined for committing a
13 nonviolent offense, up to a maximum of thirty days per month of
14 time served;

15 (3) for a prisoner confined following
16 revocation of parole for the alleged commission of a new felony
17 offense or for absconding from parole, up to a maximum of four
18 days per month of time served during the parole term following
19 revocation; and

20 (4) for a prisoner confined following
21 revocation of parole for a reason other than the alleged
22 commission of a new felony offense or absconding from parole:

23 (a) up to a maximum of eight days per
24 month of time served during the parole term following
25 revocation, if the prisoner was convicted of a serious violent

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1 offense or failed to pass a drug test administered as a
2 condition of parole; or

3 (b) up to a maximum of thirty days per
4 month of time served during the parole term following
5 revocation, if the prisoner was convicted of a nonviolent
6 offense.

7 B. A prisoner may earn meritorious deductions upon
8 recommendation by the classification supervisor, based upon the
9 prisoner's active participation in approved programs and the
10 quality of the prisoner's participation in those approved
11 programs. A prisoner may not earn meritorious deductions unless
12 the recommendation of the classification supervisor is approved
13 by the warden or the warden's designee.

14 C. If a prisoner's active participation in approved
15 programs is interrupted by a lockdown at a correctional
16 facility, the prisoner may continue to be awarded meritorious
17 deductions at the rate the prisoner was earning meritorious
18 deductions prior to the lockdown, unless the warden or the
19 warden's designee determines that the prisoner's conduct
20 contributed to the initiation or continuance of the lockdown.

21 D. A prisoner confined in a correctional facility
22 designated by the corrections department is eligible for lump-
23 sum meritorious deductions as follows:

24 (1) for successfully completing an approved
25 vocational, substance abuse or mental health program, one month;

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1 except when the prisoner has a demonstrable physical, mental
2 health or developmental disability that prevents the prisoner
3 from successfully earning a general education diploma, in which
4 case, the prisoner shall be awarded three months;

5 (2) for earning a general education diploma,
6 three months;

7 (3) for earning an associate's degree, four
8 months;

9 (4) for earning a bachelor's degree, five
10 months;

11 (5) for earning a graduate qualification, five
12 months; and

13 (6) for engaging in a heroic act of saving
14 life or property, engaging in extraordinary conduct for the
15 benefit of the state or the public that is at great expense or
16 risk to or involves great effort on [~~behalf~~] the part of the
17 prisoner or engaging in extraordinary conduct far in excess of
18 normal program assignments that demonstrates the prisoner's
19 commitment to self-rehabilitation. The classification
20 supervisor and the warden or the warden's designee may recommend
21 the number of days to be awarded in each case based upon the
22 particular merits, but any award shall be determined by the
23 director of the adult institutions division of the corrections
24 department or the director's designee.

25 E. Lump-sum meritorious deductions, provided in

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1 Paragraphs (1) through (6) of Subsection D of this section, may
2 be awarded in addition to the meritorious deductions provided in
3 Subsections A and B of this section. Lump-sum meritorious
4 deductions shall not exceed one year per award and shall not
5 exceed a total of one year for all lump-sum meritorious
6 deductions awarded in any consecutive twelve-month period.

7 F. A prisoner is not eligible to earn meritorious
8 deductions if the prisoner:

9 (1) disobeys an order to perform labor,
10 pursuant to Section 33-8-4 NMSA 1978;

11 (2) is in disciplinary segregation;

12 (3) is confined for committing a serious
13 violent offense and is within the first sixty days of receipt by
14 the corrections department; or

15 (4) is not an active participant in programs
16 recommended and approved for the prisoner by the classification
17 supervisor.

18 G. The provisions of this section shall not be
19 interpreted as providing eligibility to earn meritorious
20 deductions from a sentence of life imprisonment or a sentence of
21 ~~[death]~~ life imprisonment without possibility of release or
22 parole.

23 H. The corrections department shall promulgate rules
24 to implement the provisions of this section, and the rules shall
25 be matters of public record. A concise summary of the rules

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1 shall be provided to each prisoner, and each prisoner shall
2 receive a quarterly statement of the meritorious deductions
3 earned.

4 I. A New Mexico prisoner confined in a federal or
5 out-of-state correctional facility is eligible to earn
6 meritorious deductions for active participation in programs on
7 the basis of the prisoner's conduct and program reports
8 furnished by that facility to the corrections department. All
9 decisions regarding the award and forfeiture of meritorious
10 deductions at such facility are subject to final approval by the
11 director of the adult institutions division of the corrections
12 department or the director's designee.

13 J. In order to be eligible for meritorious
14 deductions, a prisoner confined in a federal or out-of-state
15 correctional facility designated by the corrections department
16 must actively participate in programs that are available. If a
17 federal or out-of-state correctional facility does not have
18 programs available for a prisoner, the prisoner may be awarded
19 meritorious deductions at the rate the prisoner could have
20 earned meritorious deductions if the prisoner had actively
21 participated in programs.

22 K. A prisoner confined in a correctional facility in
23 New Mexico that is operated by a private company, pursuant to a
24 contract with the corrections department, is eligible to earn
25 meritorious deductions in the same manner as a prisoner confined

1 in a state-run correctional facility. All decisions regarding
2 the award or forfeiture of meritorious deductions at such
3 facilities are subject to final approval by the director of the
4 adult institutions division of the corrections department or the
5 director's designee.

6 L. As used in this section:

7 (1) "active participant" means a prisoner who
8 has begun, and is regularly engaged in, approved programs;

9 (2) "program" means work, vocational,
10 educational, substance abuse and mental health programs,
11 approved by the classification supervisor, that contribute to a
12 prisoner's self-betterment through the development of personal
13 and occupational skills. "Program" does not include
14 recreational activities;

15 (3) "nonviolent offense" means any offense
16 other than a serious violent offense; and

17 (4) "serious violent offense" means:

18 (a) second degree murder, as provided in
19 Section 30-2-1 NMSA 1978;

20 (b) voluntary manslaughter, as provided
21 in Section 30-2-3 NMSA 1978;

22 (c) third degree aggravated battery, as
23 provided in Section 30-3-5 NMSA 1978;

24 (d) third degree aggravated battery
25 against a household member, as provided in Section 30-3-16 NMSA

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1 1978;

2 (e) first degree kidnapping, as provided
3 in Section 30-4-1 NMSA 1978;

4 (f) first and second degree criminal
5 sexual penetration, as provided in Section 30-9-11 NMSA 1978;

6 (g) second and third degree criminal
7 sexual contact of a minor, as provided in Section 30-9-13 NMSA
8 1978;

9 (h) first and second degree robbery, as
10 provided in Section 30-16-2 NMSA 1978;

11 (i) second degree aggravated arson, as
12 provided in Section 30-17-6 NMSA 1978;

13 (j) shooting at a dwelling or occupied
14 building, as provided in Section 30-3-8 NMSA 1978;

15 (k) shooting at or from a motor vehicle,
16 as provided in Section 30-3-8 NMSA 1978;

17 (l) aggravated battery upon a peace
18 officer, as provided in Section 30-22-25 NMSA 1978;

19 (m) assault with intent to commit a
20 violent felony upon a peace officer, as provided in Section
21 30-22-23 NMSA 1978;

22 (n) aggravated assault upon a peace
23 officer, as provided in Section 30-22-22 NMSA 1978; ~~and~~

24 (o) mutilation, as provided in Section
25 30-3-5.1 NMSA 1978; or

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1 [~~to~~] (p) any of the following offenses,
2 when the nature of the offense and the resulting harm are such
3 that the court judges the crime to be a serious violent offense
4 for the purpose of this section: 1) involuntary manslaughter,
5 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
6 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
7 third degree assault with intent to commit a violent felony, as
8 provided in Section 30-3-3 NMSA 1978; 4) fourth degree
9 aggravated assault against a household member, as provided in
10 Section 30-3-13 NMSA 1978; 5) third degree assault against a
11 household member with intent to commit a violent felony, as
12 provided in Section 30-3-14 NMSA 1978; 6) third and fourth
13 degree aggravated stalking, as provided in Section 30-3A-3.1
14 NMSA 1978; 7) second degree kidnapping, as provided in Section
15 30-4-1 NMSA 1978; 8) second degree abandonment of a child, as
16 provided in Section 30-6-1 NMSA 1978; 9) first, second and third
17 degree abuse of a child, as provided in Section 30-6-1 NMSA
18 1978; 10) third degree dangerous use of explosives, as provided
19 in Section 30-7-5 NMSA 1978; 11) third and fourth degree
20 criminal sexual penetration, as provided in Section 30-9-11 NMSA
21 1978; 12) fourth degree criminal sexual contact of a minor, as
22 provided in Section 30-9-13 NMSA 1978; 13) third degree robbery,
23 as provided in Section 30-16-2 NMSA 1978; 14) third degree
24 homicide by vehicle or great bodily [~~injury~~] harm by vehicle, as
25 provided in Section 66-8-101 NMSA 1978; [~~and~~] or 15) battery

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1 upon a peace officer, as provided in Section 30-22-24 NMSA 1978.

2 M. Except for sex offenders, as provided in Section
3 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
4 correctional facility designated by the corrections department
5 who has been released from confinement and who is serving a
6 parole term may be awarded earned meritorious deductions of up
7 to thirty days per month upon recommendation of the parole
8 officer supervising the offender, with the final approval of the
9 adult parole board. The offender must be in compliance with all
10 the conditions of the offender's parole to be eligible for
11 earned meritorious deductions. The adult parole board may
12 remove earned meritorious deductions previously awarded if the
13 offender later fails to comply with the conditions of the
14 offender's parole. The corrections department and the adult
15 parole board shall promulgate rules to implement the provisions
16 of this subsection. This subsection applies to offenders who
17 are serving a parole term on or after July 1, 2004."

18 SECTION 6. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2013.