

1 SENATE BILL 634

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

11 RELATING TO SENTENCING; ELIMINATING CERTAIN MANDATORY MINIMUM
12 SENTENCES; ALLOWING JUDICIAL DISCRETION IN SENTENCING.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 17-2-10 NMSA 1978 (being Laws 1931,
16 Chapter 117, Section 7, as amended) is amended to read:

17 "17-2-10. VIOLATION OF GAME AND FISH LAWS OR
18 [~~REGULATIONS~~] RULES--PENALTIES.--

19 A. [~~Any~~] A person violating any of the provisions
20 of Chapter 17 NMSA 1978 or any [~~regulations~~] rules adopted by
21 the state game commission that relate to the time, extent,
22 means or manner that game animals, birds or fish may be hunted,
23 taken, captured, killed, possessed, sold, purchased or shipped
24 is guilty of a misdemeanor and upon conviction may be sentenced
25 to imprisonment in the county jail for a term not to exceed six

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1 months. In addition, the person shall be sentenced to the
2 payment of a fine in accordance with the following schedule:

3 (1) for illegally taking, attempting to take,
4 killing, capturing or possessing of each deer, antelope,
5 javelina, bear or cougar during a closed season, a fine of four
6 hundred dollars (\$400);

7 (2) for illegally taking, attempting to take,
8 killing, capturing or possessing of each elk, bighorn sheep,
9 oryx, ibex or Barbary sheep, a fine of one thousand dollars
10 (\$1,000);

11 (3) for hunting big game without a proper and
12 valid license, lawfully procured, a fine of one hundred dollars
13 (\$100);

14 (4) for exceeding the bag limit of any big
15 game species, a fine of four hundred dollars (\$400);

16 (5) for attempting to exceed the bag limit of
17 any big game species by the hunting of any big game animal
18 after having tagged a similar big game species, a fine of two
19 hundred dollars (\$200);

20 (6) for signing a false statement to procure a
21 resident hunting or fishing license when the applicant is
22 residing in another state at the time of application for a
23 license, a fine of four hundred dollars (\$400);

24 (7) for using a hunting or fishing license
25 issued to another person, a fine of one hundred dollars (\$100);

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1 (8) for a violation of Section 17-2-31 NMSA
2 1978, a fine of three hundred dollars (\$300);

3 (9) for selling, offering for sale, offering
4 to purchase or purchasing any big game animal, unless otherwise
5 provided by Chapter 17 NMSA 1978, a fine of one thousand
6 dollars (\$1,000);

7 (10) for illegally taking, attempting to take,
8 killing, capturing or possessing of each jaguar, a fine of two
9 thousand dollars (\$2,000); and

10 (11) for a violation of the provisions of
11 Subsection A of Section 17-2A-3 NMSA 1978, a fine of five
12 hundred dollars (\$500).

13 B. A person convicted a second time for violating
14 any of the provisions of Chapter 17 NMSA 1978 or any
15 [~~regulations~~] rules adopted by the state game commission that
16 relate to the time, extent, means or manner that game animals,
17 birds or fish may be hunted, taken, captured, killed,
18 possessed, sold, purchased or shipped is guilty of a
19 misdemeanor and upon conviction may be sentenced to
20 imprisonment in the county jail for a term of not more than
21 three hundred sixty-four days. In addition, the person shall
22 be sentenced to the payment of a fine in accordance with the
23 following schedule:

24 (1) for illegally taking, attempting to take,
25 killing, capturing or possessing of each deer, antelope,

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1 javelina, bear or cougar during a closed season, a fine of six
2 hundred dollars (\$600);

3 (2) for illegally taking, attempting to take,
4 killing, capturing or possessing of each elk, bighorn sheep,
5 oryx, ibex or Barbary sheep, a fine of one thousand five
6 hundred dollars (\$1,500);

7 (3) for hunting big game without a proper and
8 valid license, lawfully procured, a fine of four hundred
9 dollars (\$400);

10 (4) for exceeding the bag limit of any big
11 game species, a fine of six hundred dollars (\$600);

12 (5) for attempting to exceed the bag limit of
13 any big game species by the hunting of any big game animal
14 after having tagged a similar big game species, a fine of six
15 hundred dollars (\$600);

16 (6) for signing a false statement to procure a
17 resident hunting or fishing license when the applicant is
18 residing in another state at the time of application for a
19 license, a fine of six hundred dollars (\$600);

20 (7) for using a hunting or fishing license
21 issued to another person, a fine of two hundred fifty dollars
22 (\$250);

23 (8) for a violation of Section 17-2-31 NMSA
24 1978, a fine of five hundred dollars (\$500);

25 (9) for selling, offering for sale, offering

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1 to purchase or purchasing any big game animal, unless otherwise
2 provided by Chapter 17 NMSA 1978, a fine of one thousand five
3 hundred dollars (\$1,500);

4 (10) for illegally taking, attempting to take,
5 killing, capturing or possessing of each jaguar, a fine of four
6 thousand dollars (\$4,000); and

7 (11) for a violation of the provisions of
8 Subsection A of Section 17-2A-3 NMSA 1978, a fine of one
9 thousand dollars (\$1,000).

10 C. [~~Notwithstanding the provisions of Section~~
11 ~~31-18-13 NMSA 1978~~] A person convicted a third or subsequent
12 time for violating any of the provisions of Chapter 17 NMSA
13 1978 or any [~~regulations~~] rules adopted by the state game
14 commission that relate to the time, extent, means or manner
15 that game animals, birds or fish may be hunted, taken,
16 captured, killed, possessed, sold, purchased or shipped is
17 guilty of a misdemeanor and upon conviction may be sentenced to
18 imprisonment in the county jail for a term of not less than
19 ninety days [~~which shall not be suspended or deferred~~] and not
20 more than three hundred sixty-four days. In addition, the
21 person shall be sentenced to the payment of a fine in
22 accordance with the following schedule:

23 (1) for illegally taking, attempting to take,
24 killing, capturing or possessing of each deer, antelope,
25 javelina, bear or cougar during a closed season, a fine of one

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1 thousand two hundred dollars (\$1,200);

2 (2) for illegally taking, attempting to take,
3 killing, capturing or possessing of each elk, bighorn sheep,
4 oryx, ibex or Barbary sheep, a fine of three thousand dollars
5 (\$3,000);

6 (3) for hunting big game without a proper and
7 valid license, lawfully procured, a fine of one thousand
8 dollars (\$1,000);

9 (4) for exceeding the bag limit of any big
10 game species, a fine of one thousand two hundred dollars
11 (\$1,200);

12 (5) for attempting to exceed the bag limit of
13 any big game species by the hunting of any big game animal
14 after having tagged a similar big game species, a fine of one
15 thousand dollars (\$1,000);

16 (6) for signing a false statement to procure a
17 resident hunting or fishing license when the applicant is
18 residing in another state at the time of application for a
19 license, a fine of one thousand two hundred dollars (\$1,200);

20 (7) for using a hunting or fishing license
21 issued to another person, a fine of one thousand dollars
22 (\$1,000);

23 (8) for a violation of Section 17-2-31 NMSA
24 1978, a fine of one thousand dollars (\$1,000);

25 (9) for selling, offering for sale, offering

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1 to purchase or purchasing any big game animal, unless otherwise
2 provided by Chapter 17 NMSA 1978, a fine of three thousand
3 dollars (\$3,000);

4 (10) for illegally taking, attempting to take,
5 killing, capturing or possessing of each jaguar, a fine of six
6 thousand dollars (\$6,000); and

7 (11) for a violation of the provisions of
8 Subsection A of Section 17-2A-3 NMSA 1978, a fine of two
9 thousand dollars (\$2,000).

10 D. ~~Any~~ A person who is convicted of a violation
11 of any ~~regulations~~ rules adopted by the state game commission
12 that relate to the time, extent, means or manner that game
13 animals, birds or fish may be hunted, taken, captured, killed,
14 possessed, sold, purchased or shipped or of a violation of any
15 of the provisions of Chapter 17 NMSA 1978, for which a
16 punishment is not set forth under this section, shall be fined
17 not less than fifty dollars (\$50.00) or more than five hundred
18 dollars (\$500) or imprisoned not more than six months or both.

19 E. The provisions of this section shall not be
20 interpreted to prevent, constrain or penalize a Native American
21 for engaging in activities for religious purposes, as provided
22 in Section 17-2-14 or 17-2-41 NMSA 1978.

23 F. The provisions of this section shall not apply
24 to a landowner or lessee, or employee of either of them, who
25 kills an animal on private land, in which they have an

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1 ownership or leasehold interest, that is threatening human life
2 or damaging or destroying property, including crops; provided,
3 however, that the killing is reported to the department of game
4 and fish within twenty-four hours and before the removal of the
5 carcass of the animal killed; and provided further that all
6 actions authorized in this subsection are carried out according
7 to [~~regulations~~] rules of the department."

8 SECTION 2. Section 30-9-11 NMSA 1978 (being Laws 1975,
9 Chapter 109, Section 2, as amended) is amended to read:

10 "30-9-11. CRIMINAL SEXUAL PENETRATION.--

11 A. Criminal sexual penetration is the unlawful and
12 intentional causing of a person to engage in sexual
13 intercourse, cunnilingus, fellatio or anal intercourse or the
14 causing of penetration, to any extent and with any object, of
15 the genital or anal openings of another, whether or not there
16 is any emission.

17 B. Criminal sexual penetration does not include
18 medically indicated procedures.

19 C. Aggravated criminal sexual penetration consists
20 of all criminal sexual penetration perpetrated on a child under
21 thirteen years of age with an intent to kill or with a depraved
22 mind regardless of human life. Whoever commits aggravated
23 criminal sexual penetration is guilty of a first degree felony
24 for aggravated criminal sexual penetration.

25 D. Criminal sexual penetration in the first degree

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1 consists of all criminal sexual penetration perpetrated:
2 (1) on a child under thirteen years of age; or
3 (2) by the use of force or coercion that
4 results in great bodily harm or great mental anguish to the
5 victim.

6 Whoever commits criminal sexual penetration in the first
7 degree is guilty of a first degree felony.

8 E. Criminal sexual penetration in the second degree
9 consists of all criminal sexual penetration perpetrated:

10 (1) by the use of force or coercion on a child
11 thirteen to eighteen years of age;

12 (2) on an inmate confined in a correctional
13 facility or jail when the perpetrator is in a position of
14 authority over the inmate;

15 (3) by the use of force or coercion that
16 results in personal injury to the victim;

17 (4) by the use of force or coercion when the
18 perpetrator is aided or abetted by one or more persons;

19 (5) in the commission of any other felony; or

20 (6) when the perpetrator is armed with a
21 deadly weapon.

22 Whoever commits criminal sexual penetration in the second
23 degree is guilty of a second degree felony. Whoever commits
24 criminal sexual penetration in the second degree when the
25 victim is a child who is thirteen to eighteen years of age is

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1 guilty of a second degree felony for a sexual offense against a
2 child [~~and, notwithstanding the provisions of Section 31-18-15~~
3 ~~NMSA 1978, shall be sentenced to a minimum term of imprisonment~~
4 ~~of three years, which shall not be suspended or deferred. The~~
5 ~~imposition of a minimum, mandatory term of imprisonment~~
6 ~~pursuant to the provisions of this subsection shall not be~~
7 ~~interpreted to preclude the imposition of sentencing~~
8 ~~enhancements pursuant to the provisions of the Criminal~~
9 ~~Sentencing Act)].~~

10 F. Criminal sexual penetration in the third degree
11 consists of all criminal sexual penetration perpetrated through
12 the use of force or coercion not otherwise specified in this
13 section.

14 Whoever commits criminal sexual penetration in the third
15 degree is guilty of a third degree felony.

16 G. Criminal sexual penetration in the fourth degree
17 consists of all criminal sexual penetration:

18 (1) not defined in Subsections D through F of
19 this section perpetrated on a child thirteen to sixteen years
20 of age when the perpetrator is at least eighteen years of age
21 and is at least four years older than the child and not the
22 spouse of that child; or

23 (2) perpetrated on a child thirteen to
24 eighteen years of age when the perpetrator, who is a licensed
25 school employee, an unlicensed school employee, a school

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1 contract employee, a school health service provider or a school
2 volunteer, and who is at least eighteen years of age and is at
3 least four years older than the child and not the spouse of
4 that child, learns while performing services in or for a school
5 that the child is a student in a school.

6 Whoever commits criminal sexual penetration in the fourth
7 degree is guilty of a fourth degree felony."

8 SECTION 3. Section 30-9-13 NMSA 1978 (being Laws 1975,
9 Chapter 109, Section 4, as amended) is amended to read:

10 "30-9-13. CRIMINAL SEXUAL CONTACT OF A MINOR.--

11 A. Criminal sexual contact of a minor is the
12 unlawful and intentional touching of or applying force to the
13 intimate parts of a minor or the unlawful and intentional
14 causing of a minor to touch one's intimate parts. For the
15 purposes of this section, "intimate parts" means the primary
16 genital area, groin, buttocks, anus or breast.

17 B. Criminal sexual contact of a minor in the second
18 degree consists of all criminal sexual contact of the unclothed
19 intimate parts of a minor perpetrated:

20 (1) on a child under thirteen years of age; or

21 (2) on a child thirteen to eighteen years of
22 age when:

23 (a) the perpetrator is in a position of
24 authority over the child and uses that authority to coerce the
25 child to submit;

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1 (b) the perpetrator uses force or
2 coercion that results in personal injury to the child;

3 (c) the perpetrator uses force or
4 coercion and is aided or abetted by one or more persons; or

5 (d) the perpetrator is armed with a
6 deadly weapon.

7 Whoever commits criminal sexual contact of a minor in the
8 second degree is guilty of a second degree felony for a sexual
9 offense against a child [~~and, notwithstanding the provisions of~~
10 ~~Section 31-18-15 NMSA 1978, shall be sentenced to a minimum~~
11 ~~term of imprisonment of three years, which shall not be~~
12 ~~suspended or deferred. The imposition of a minimum, mandatory~~
13 ~~term of imprisonment pursuant to the provisions of this~~
14 ~~subsection shall not be interpreted to preclude the imposition~~
15 ~~of sentencing enhancements pursuant to the provisions of~~
16 ~~Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978].~~

17 C. Criminal sexual contact of a minor in the third
18 degree consists of all criminal sexual contact of a minor
19 perpetrated:

20 (1) on a child under thirteen years of age; or
21 (2) on a child thirteen to eighteen years of
22 age when:

23 (a) the perpetrator is in a position of
24 authority over the child and uses this authority to coerce the
25 child to submit;

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1 (b) the perpetrator uses force or
2 coercion [~~which~~] that results in personal injury to the child;

3 (c) the perpetrator uses force or
4 coercion and is aided or abetted by one or more persons; or

5 (d) the perpetrator is armed with a
6 deadly weapon.

7 Whoever commits criminal sexual contact of a minor in the
8 third degree is guilty of a third degree felony for a sexual
9 offense against a child.

10 D. Criminal sexual contact of a minor in the fourth
11 degree consists of all criminal sexual contact:

12 (1) not defined in Subsection C of this
13 section, of a child thirteen to eighteen years of age
14 perpetrated with force or coercion; or

15 (2) of a minor perpetrated on a child thirteen
16 to eighteen years of age when the perpetrator, who is a
17 licensed school employee, an unlicensed school employee, a
18 school contract employee, a school health service provider or a
19 school volunteer, and who is at least eighteen years of age and
20 is at least four years older than the child and not the spouse
21 of that child, learns while performing services in or for a
22 school that the child is a student in a school.

23 Whoever commits criminal sexual contact in the fourth
24 degree is guilty of a fourth degree felony."

25 SECTION 4. A new section of the Criminal Sentencing Act

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1 is enacted to read:

2 "[NEW MATERIAL] LIMITATION ON MANDATORY MINIMUM
3 SENTENCES--JUDICIAL DISCRETION.--The sentences provided in the
4 Criminal Sentencing Act or other laws of New Mexico
5 notwithstanding, the court may make a specific finding that
6 justice will not be served by imposing a mandatory sentence of
7 imprisonment and that there are substantial and compelling
8 reasons, stated on the record, for departing from the sentence
9 imposed pursuant to the Criminal Sentencing Act or other law.
10 Upon such finding and reasoning, the court may sentence an
11 offender to a lesser sentence."

12 SECTION 5. Section 31-18-13 NMSA 1978 (being Laws 1977,
13 Chapter 216, Section 2, as amended) is amended to read:

14 "31-18-13. SENTENCING AUTHORITY--ALL CRIMES.--

15 A. Unless otherwise provided in this section, all
16 persons convicted of a crime under the laws of New Mexico shall
17 be sentenced in accordance with the provisions of the Criminal
18 Sentencing Act; provided that a person sentenced as a serious
19 youthful offender or as a youthful offender may be sentenced to
20 less than the basic [~~or mandatory~~] sentence prescribed by the
21 Criminal Sentencing Act as provided in Section 4 of this 2015
22 act.

23 B. Whenever a defendant is convicted of a crime
24 under the constitution of New Mexico or a statute not contained
25 in the Criminal Code, which specifies the penalty to be imposed

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1 on conviction, the court shall set as a definite term of
2 imprisonment the minimum term prescribed by the statute or
3 constitutional provision and may impose the fine prescribed by
4 the statute or constitutional provision for the particular
5 crime for which the person was convicted; provided that a
6 person sentenced as a serious youthful offender or as a
7 youthful offender may be sentenced to less than the minimum
8 term of imprisonment prescribed by the statute or the
9 constitutional provision.

10 C. A crime declared to be a felony by the
11 constitution or a statute not contained in the Criminal Code,
12 without specification of the sentence or fine to be imposed on
13 conviction, shall constitute a fourth degree felony as
14 prescribed under the Criminal Code for the purpose of the
15 sentence, and the defendant shall be so sentenced.

16 D. Any other crime for which the sentence to be
17 imposed upon conviction is not specified shall constitute, for
18 the purpose of the sentence, a petty misdemeanor."

19 SECTION 6. Section 31-18-16 NMSA 1978 (being Laws 1977,
20 Chapter 216, Section 5, as amended) is amended to read:

21 "31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE--
22 SUSPENSION AND DEFERRAL LIMITED.--

23 A. When a separate finding of fact by the court or
24 jury shows that a firearm was used in the commission of a
25 noncapital felony, the basic sentence of imprisonment

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1 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
2 be increased by one year [~~and the sentence imposed by this~~
3 ~~subsection shall be the first year served and shall not be~~
4 ~~suspended or deferred~~]; provided that when the offender is a
5 serious youthful offender or a youthful offender, the sentence
6 imposed by this subsection may be increased by one year.

7 B. For a second or subsequent noncapital felony in
8 which a firearm is used, the basic sentence of imprisonment
9 prescribed in Section 31-18-15 NMSA 1978 shall be increased by
10 three years [~~and the sentence imposed by this subsection shall~~
11 ~~be the first three years served and shall not be suspended or~~
12 ~~deferred~~]; provided that when the offender is a serious
13 youthful offender or a youthful offender, the sentence imposed
14 by this subsection may be increased by three years.

15 C. If the case is tried before a jury and if a
16 prima facie case has been established showing that a firearm
17 was used in the commission of the offense, the court shall
18 submit the issue to the jury by special interrogatory. If the
19 case is tried by the court and if a prima facie case has been
20 established showing that a firearm was used in the commission
21 of the offense, the court shall decide the issue and shall make
22 a separate finding of fact thereon."

23 SECTION 7. Section 31-18-17 NMSA 1978 (being Laws 1977,
24 Chapter 216, Section 6, as amended) is amended to read:

25 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC

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1 SENTENCE.--

2 A. A person convicted of a noncapital felony in
3 this state whether within the Criminal Code or the Controlled
4 Substances Act or not who has incurred one prior felony
5 conviction that was part of a separate transaction or
6 occurrence or conditional discharge under Section 31-20-13 NMSA
7 1978 is a habitual offender and [~~his~~] the habitual offender's
8 basic sentence shall be increased by one year. The sentence
9 imposed pursuant to this subsection shall not be suspended or
10 deferred, unless the court makes a specific finding that [~~the~~
11 ~~prior felony conviction and the instant felony conviction are~~
12 ~~both for nonviolent felony offenses and that~~] justice will not
13 be served by imposing a mandatory sentence of imprisonment and
14 that there are substantial and compelling reasons, stated on
15 the record, for departing from the sentence imposed pursuant to
16 this subsection.

17 B. A person convicted of a noncapital felony in
18 this state whether within the Criminal Code or the Controlled
19 Substances Act or not who has incurred two prior felony
20 convictions that were parts of separate transactions or
21 occurrences or conditional discharge under Section 31-20-13
22 NMSA 1978 is a habitual offender and [~~his~~] the habitual
23 offender's basic sentence shall be increased by four years.
24 [~~The sentence imposed by this subsection shall not be suspended~~
25 ~~or deferred.~~]

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1 C. A person convicted of a noncapital felony in
2 this state whether within the Criminal Code or the Controlled
3 Substances Act or not who has incurred three or more prior
4 felony convictions that were parts of separate transactions or
5 occurrences or conditional discharge under Section 31-20-13
6 NMSA 1978 is a habitual offender and [~~his~~] the habitual
7 offender's basic sentence shall be increased by eight years.
8 [~~The sentence imposed by this subsection shall not be suspended~~
9 ~~or deferred.~~]

10 D. As used in this section, "prior felony
11 conviction" means:

12 (1) a conviction, when less than ten years
13 have passed prior to the instant felony conviction since the
14 person completed serving [~~his~~] the sentence or period of
15 probation or parole for the prior felony, whichever is later,
16 for a prior felony committed within New Mexico whether within
17 the Criminal Code or not, but not including a conviction for a
18 felony pursuant to the provisions of Section 66-8-102 NMSA
19 1978; or

20 (2) a prior felony, when less than ten years
21 have passed prior to the instant felony conviction since the
22 person completed serving [~~his~~] the sentence or period of
23 probation or parole for the prior felony, whichever is later,
24 for which the person was convicted other than an offense
25 triable by court martial if:

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1 (a) the conviction was rendered by a
2 court of another state, the United States, a territory of the
3 United States or the commonwealth of Puerto Rico;

4 (b) the offense was punishable, at the
5 time of conviction, by death or a maximum term of imprisonment
6 of more than one year; or

7 (c) the offense would have been
8 classified as a felony in this state at the time of conviction.

9 E. As used in this section, "nonviolent felony
10 offense" means application of force, threatened use of force or
11 a deadly weapon was not used by the offender in the commission
12 of the offense."

13 SECTION 8. Section 31-18-23 NMSA 1978 (being Laws 1994,
14 Chapter 24, Section 2, as amended) is amended to read:

15 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY
16 LIFE IMPRISONMENT--EXCEPTION.--

17 A. When a defendant is convicted of a third violent
18 felony, and each violent felony conviction is part of a
19 separate transaction or occurrence, and at least the third
20 violent felony conviction is in New Mexico, the defendant
21 [~~shall~~], in addition to the sentence imposed for the third
22 violent conviction, may be punished by a sentence of life
23 imprisonment. The life imprisonment sentence shall be subject
24 to parole pursuant to the provisions of Section 31-21-10 NMSA
25 1978.

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1 B. The sentence of life imprisonment shall be
2 imposed after a sentencing hearing, separate from the trial or
3 guilty plea proceeding resulting in the third violent felony
4 conviction, pursuant to the provisions of Section 31-18-24 NMSA
5 1978.

6 C. For the purpose of this section, a violent
7 felony conviction incurred by a defendant before the defendant
8 reaches the age of eighteen shall not count as a violent felony
9 conviction.

10 D. When a defendant has a felony conviction from
11 another state, the felony conviction shall be considered a
12 violent felony for the purposes of the Criminal Sentencing Act
13 if that crime would be considered a violent felony in New
14 Mexico.

15 E. As used in the Criminal Sentencing Act:

16 (1) "great bodily harm" means an injury to the
17 person that creates a high probability of death or that causes
18 serious disfigurement or that results in permanent loss or
19 impairment of the function of any member or organ of the body;
20 and

21 (2) "violent felony" means:

22 (a) murder in the first or second
23 degree, as provided in Section 30-2-1 NMSA 1978;

24 (b) shooting at or from a motor vehicle
25 resulting in great bodily harm, as provided in Subsection B of

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1 Section 30-3-8 NMSA 1978;

2 (c) kidnapping resulting in great bodily
3 harm inflicted upon the victim by the victim's captor, as
4 provided in Subsection B of Section 30-4-1 NMSA 1978;

5 (d) criminal sexual penetration, as
6 provided in Subsection C or D or Paragraph (5) or (6) of
7 Subsection E of Section 30-9-11 NMSA 1978; and

8 (e) robbery while armed with a deadly
9 weapon resulting in great bodily harm as provided in Section
10 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA
11 1978."

12 SECTION 9. Section 31-18-25 NMSA 1978 (being Laws 1996,
13 Chapter 79, Section 1, as amended) is amended to read:

14 "31-18-25. TWO VIOLENT SEXUAL OFFENSE CONVICTIONS--
15 MANDATORY LIFE IMPRISONMENT--EXCEPTION.--

16 A. When a defendant is convicted of a second
17 violent sexual offense, and each violent sexual offense
18 conviction is part of a separate transaction or occurrence, and
19 at least the second violent sexual offense conviction is in New
20 Mexico, the defendant [~~shall~~], in addition to the punishment
21 imposed for the second violent sexual offense conviction, may
22 be punished by a sentence of life imprisonment. The life
23 imprisonment sentence shall be subject to parole pursuant to
24 the provisions of Section 31-21-10 NMSA 1978.

25 B. Notwithstanding the provisions of Subsection A

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1 of this section, when a defendant is convicted of a second
2 violent sexual offense, and each violent sexual offense
3 conviction is part of a separate transaction or occurrence, and
4 the victim of each violent sexual offense was less than
5 thirteen years of age at the time of the offense, and at least
6 the second violent sexual offense conviction is in New Mexico,
7 the defendant [~~shall~~] may be punished by a sentence of life
8 imprisonment without the possibility of parole.

9 C. The sentence of life imprisonment shall be
10 imposed after a sentencing hearing, separate from the trial or
11 guilty plea proceeding resulting in the second violent sexual
12 offense conviction, pursuant to the provisions of Section
13 31-18-26 NMSA 1978.

14 D. For the purposes of this section, a violent
15 sexual offense conviction incurred by a defendant before [~~he~~]
16 the defendant reaches the age of eighteen shall not count as a
17 violent sexual offense conviction.

18 E. When a defendant has a felony conviction from
19 another state, the felony conviction shall be considered a
20 violent sexual offense for the purposes of the Criminal
21 Sentencing Act if the crime would be considered a violent
22 sexual offense in New Mexico.

23 F. As used in the Criminal Sentencing Act, "violent
24 sexual offense" means:

25 (1) criminal sexual penetration in the first

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1 degree, as provided in Subsection [G] D of Section 30-9-11 NMSA
2 1978; or

3 (2) criminal sexual penetration in the second
4 degree, as provided in Subsection [D] E of Section 30-9-11 NMSA
5 1978."

6 **SECTION 10.** Section 40-13-6 NMSA 1978 (being Laws 1987,
7 Chapter 286, Section 6, as amended) is amended to read:

8 "40-13-6. SERVICE OF ORDER--DURATION--PENALTY--REMEDIES
9 NOT EXCLUSIVE.--

10 A. An order of protection granted under the Family
11 Violence Protection Act shall be filed with the clerk of the
12 court, and a copy shall be sent by the clerk to the local law
13 enforcement agency. The order shall be personally served upon
14 the restrained party, unless the restrained party or the
15 restrained party's attorney was present at the time the order
16 was issued. The order shall be filed and served without cost
17 to the protected party.

18 B. A local law enforcement agency receiving an
19 order of protection from the clerk of the court that was issued
20 under the Family Violence Protection Act shall have the order
21 entered in the national crime information center's order of
22 protection file within seventy-two hours of receipt. This does
23 not include temporary orders of protection entered pursuant to
24 the provisions of Section 40-13-4 NMSA 1978.

25 C. An order of protection granted by the court

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1 involving custody or support shall be effective for a fixed
2 period of time not to exceed six months. The order may be
3 extended for good cause upon motion of the protected party for
4 an additional period of time not to exceed six months.

5 Injunctive orders shall continue until modified or rescinded
6 upon motion by either party or until the court approves a
7 subsequent consent agreement entered into by the parties.

8 D. A peace officer may arrest without a warrant and
9 take into custody a restrained party whom the peace officer has
10 probable cause to believe has violated an order of protection
11 that is issued pursuant to the Family Violence Protection Act
12 or entitled to full faith and credit.

13 E. A restrained party convicted of violating an
14 order of protection granted by a court under the Family
15 Violence Protection Act is guilty of a misdemeanor and shall be
16 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a
17 second or subsequent conviction, an offender [~~shall~~] may be
18 sentenced to a jail term of not less than seventy-two
19 consecutive hours that [~~shall not~~] may be suspended, deferred
20 or taken under advisement.

21 F. In addition to any other punishment provided in
22 the Family Violence Protection Act, the court shall order a
23 person convicted to make full restitution to the party injured
24 by the violation of an order of protection and shall order the
25 person convicted to participate in and complete a program of

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~~[bracketed material] = delete~~

1 professional counseling, at the person's own expense, if
2 possible.

3 G. In addition to charging the person with
4 violating an order of protection, a peace officer shall file
5 all other possible criminal charges arising from an incident of
6 domestic abuse when probable cause exists.

7 H. The remedies provided in the Family Violence
8 Protection Act are in addition to any other civil or criminal
9 remedy available to the protected party or the state."

10 SECTION 11. EFFECTIVE DATE.--The effective date of the
11 provisions of this act is July 1, 2015.