

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 112

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

AN ACT

RELATING TO CRIME; INCREASING THE PENALTIES FOR SECOND DEGREE
MURDER AND ATTEMPTED SECOND DEGREE MURDER; CLARIFYING
NONCAPITAL FELONY SENTENCING PROVISIONS.

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

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1 a second degree felony;

2 B. if the crime attempted is a second degree
3 felony, the person committing such attempt is guilty of a third
4 degree felony;

5 C. if the crime attempted is murder in the second
6 degree, the person committing the attempted murder is guilty of
7 a third degree felony and, notwithstanding the provisions of
8 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
9 is nine years;

10 [~~G.~~] D. if the crime attempted is a third degree
11 felony, the person committing such attempt is guilty of a
12 fourth degree felony; and

13 [~~D.~~] E. if the crime attempted is a fourth degree
14 felony, the person committing such attempt is guilty of a
15 misdemeanor.

16 No person shall be sentenced for an attempt to commit a
17 misdemeanor."

18 SECTION 2. Section 31-18-15 NMSA 1978 (being Laws 1977,
19 Chapter 216, Section 4, as amended) is amended to read:

20 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
21 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
22 DEDUCTIONS.--

23 A. [~~If a person is convicted of~~] As used in a
24 statute that establishes a noncapital felony, the following
25 defined felony classifications and associated basic [sentence]

1 sentences of imprisonment [~~is~~] for a convicted person are as
2 follows:

3 ~~[(1) for a first degree felony resulting in~~
4 ~~the death of a child, life imprisonment;~~

5 ~~(2) for a first degree felony for aggravated~~
6 ~~criminal sexual penetration, life imprisonment;~~

7 ~~(3) for a first degree felony, eighteen years~~
8 ~~imprisonment;~~

9 ~~(4) for a second degree felony resulting in~~
10 ~~the death of a human being, fifteen years imprisonment;~~

11 ~~(5) for a second degree felony for a sexual~~
12 ~~offense against a child, fifteen years imprisonment;~~

13 ~~(6) for a second degree felony for sexual~~
14 ~~exploitation of children, twelve years imprisonment;~~

15 ~~(7) for a second degree felony, nine years~~
16 ~~imprisonment;~~

17 ~~(8) for a third degree felony resulting in the~~
18 ~~death of a human being, six years imprisonment;~~

19 ~~(9) for a third degree felony for a sexual~~
20 ~~offense against a child, six years imprisonment;~~

21 ~~(10) for a third degree felony for sexual~~
22 ~~exploitation of children, eleven years imprisonment;~~

23 ~~(11) for a third degree felony, three years~~
24 ~~imprisonment;~~

25 ~~(12) for a fourth degree felony for sexual~~

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1 ~~exploitation of children, ten years imprisonment; or~~
2 ~~(13) for a fourth degree felony, eighteen~~
3 ~~months imprisonment.]~~

<u>FELONY CLASSIFICATION</u>	<u>BASIC SENTENCE</u>
<u>"first degree felony resulting in the death of a child"</u>	<u>life imprisonment</u>
<u>"first degree felony for aggravated criminal sexual penetration"</u>	<u>life imprisonment</u>
<u>"first degree felony"</u>	<u>eighteen years imprisonment</u>
<u>"second degree felony resulting in the death of a human being"</u>	<u>eighteen years imprisonment</u>
<u>"second degree felony for a sexual offense against a child"</u>	<u>fifteen years imprisonment</u>
<u>"second degree felony for sexual exploitation of children"</u>	<u>twelve years imprisonment</u>
<u>"second degree felony"</u>	<u>nine years imprisonment</u>
<u>"third degree felony resulting in the death of a human being"</u>	<u>six years imprisonment</u>
<u>"third degree felony for a sexual offense against a child"</u>	<u>six years imprisonment</u>
<u>"third degree felony for sexual exploitation of children"</u>	<u>eleven years imprisonment</u>
<u>"third degree felony"</u>	<u>three years imprisonment</u>
<u>"fourth degree felony for sexual exploitation of children"</u>	<u>ten years imprisonment</u>

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1 "fourth degree felony" eighteen months
2 imprisonment.

3 B. A basic sentence of imprisonment provided in
4 Subsection A of this section may be imposed only if the statute
5 that establishes the noncapital felony of which a person was
6 convicted uses the felony classification defined term
7 associated with that basic sentence. The appropriate basic
8 sentence of imprisonment shall be imposed upon a person
9 [~~convicted and sentenced pursuant to Subsection A of this~~
10 ~~section~~] unless the court alters the sentence pursuant to the
11 provisions of the Criminal Sentencing Act.

12 C. The court shall include in the judgment and
13 sentence of each person convicted and sentenced to imprisonment
14 in a corrections facility designated by the corrections
15 department authority for a period of parole to be served in
16 accordance with the provisions of Section 31-21-10 NMSA 1978
17 after the completion of any actual time of imprisonment and
18 authority to require, as a condition of parole, the payment of
19 the costs of parole services and reimbursement to a law
20 enforcement agency or local crime stopper program in accordance
21 with the provisions of that section. The period of parole
22 shall be deemed to be part of the sentence of the convicted
23 person in addition to the basic sentence imposed pursuant to
24 Subsection A of this section together with alterations, if any,
25 pursuant to the provisions of the Criminal Sentencing Act.

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1 D. When a court imposes a sentence of imprisonment
2 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
3 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
4 imprisonment provided pursuant to the provisions of Subsection
5 A of this section, the period of parole shall be served in
6 accordance with the provisions of Section 31-21-10 NMSA 1978
7 for the degree of felony for the basic sentence for which the
8 inmate was convicted. For the purpose of designating a period
9 of parole, a court shall not consider that the basic sentence
10 of imprisonment was suspended or deferred and that the inmate
11 served a period of imprisonment pursuant to the provisions of
12 the Criminal Sentencing Act.

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

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

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

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

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

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1 (5) for a second degree felony for a sexual
2 offense against a child, twelve thousand five hundred dollars
3 (\$12,500);

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

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

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

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

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

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

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

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

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1 provisions or if the court provides the offender with erroneous
2 information regarding those provisions, the failure to inform
3 or the error shall not provide a basis for a writ of habeas
4 corpus.

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

18 SECTION 3. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2018.