

HOUSE BILL 79

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CRIME; INCREASING THE STATUTE OF LIMITATIONS FOR SECOND DEGREE MURDER; 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 30-1-8 NMSA 1978 (being Laws 1963, Chapter 303, Section 1-8, as amended) is amended to read:

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"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A

person shall not be prosecuted, tried or punished in any court of this state unless the indictment is found or information or complaint is filed within the time as provided:

- A. for a second degree felony, within six years from the time the crime was committed;
- B. for a third or fourth degree felony, within five years from the time the crime was committed;
- C. for a misdemeanor, within two years from the time the crime was committed;
- D. for a petty misdemeanor, within one year from the time the crime was committed;
- E. for any crime against or violation of Section 51-1-38 NMSA 1978, within three years from the time the crime was committed;
- F. for a felony pursuant to Section 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the crime was committed; provided that for a series of crimes involving multiple filing periods within one calendar year, the limitation shall begin to run on December 31 of the year in which the crimes occurred;
- G. for an identity theft crime pursuant to Section 30-16-24.1 NMSA 1978, within five years from the time the crime was discovered;
- H. for any crime not contained in the Criminal Code

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or where a limitation is not otherwise provided for, within three years from the time the crime was committed; and

I. for a capital felony [Ø], a first degree violent felony or second degree murder pursuant to Subsection B of Section 30-2-1 NMSA 1978, no limitation period shall exist and prosecution for these crimes may commence at any time after the occurrence of the crime."

SECTION 2. 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 a second degree felony;

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

SJC→~~C. if the crime attempted is murder in the second degree, the person committing the attempted murder is guilty of a third degree felony and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, the basic sentence of~~

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~~imprisonment is nine years;~~ ←SJC

[~~C.~~] SJC → D. ←SJC SJC → C. ←SJC if the crime attempted is a third degree felony, the person committing such attempt is guilty of a fourth degree felony; and

[~~D.~~] SJC → E. ←SJC SJC → D. ←SJC if the crime attempted is a fourth degree felony, the person committing such attempt is guilty of a misdemeanor.

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

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

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

A. [~~If a person is convicted of~~] As used in a statute that establishes a noncapital felony, the following defined felony classifications and associated basic [sentence] sentences of imprisonment [is] are as follows:

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

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

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

~~(4) for a second degree felony resulting in~~

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~~the death of a human being, fifteen years imprisonment;~~
~~(5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;~~
~~(6) for a second degree felony for sexual exploitation of children, twelve years imprisonment;~~
~~(7) for a second degree felony, nine years imprisonment;~~
~~(8) for a third degree felony resulting in the death of a human being, six years imprisonment;~~
~~(9) for a third degree felony for a sexual offense against a child, six years imprisonment;~~
~~(10) for a third degree felony for sexual exploitation of children, eleven years imprisonment;~~
~~(11) for a third degree felony, three years imprisonment;~~
~~(12) for a fourth degree felony for sexual exploitation of children, ten years imprisonment; or~~
~~(13) for a fourth degree felony, eighteen 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</u> |

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| | |
|--|----------------------------------|
| <u>second degree felony resulting in</u> | <u>imprisonment</u> |
| <u>the death of a human being</u> | SJC→ eighteen ←SJC |
| | SJC→fifteen←SJC |
| | <u>years imprisonment</u> |
| <u>second degree felony for a sexual</u> | |
| <u>offense against a child</u> | <u>fifteen years</u> |
| | <u>imprisonment</u> |
| <u>second degree felony for sexual</u> | |
| <u>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</u> | |
| <u>the death of a human being</u> | <u>six years imprisonment</u> |
| <u>third degree felony for a sexual</u> | |
| <u>offense against a child</u> | <u>six years imprisonment</u> |
| <u>third degree felony for sexual</u> | |
| <u>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</u> | |
| <u>exploitation of children</u> | <u>ten years imprisonment</u> |
| <u>fourth degree felony</u> | <u>eighteen months</u> |
| | <u>imprisonment.</u> |

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the

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sentence pursuant to the provisions of the Criminal Sentencing Act.

C. A period of parole shall be imposed only for felony convictions wherein a person is sentenced to imprisonment of more than one year, unless the parties to a proceeding agree that a period of parole should be imposed. If a period of parole is imposed, the court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. If imposed, the period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection

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A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

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

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

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

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

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

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

(6) for a second degree felony for sexual

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exploitation of children, five thousand dollars (\$5,000);

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

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

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

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

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

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

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

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