

1 HOUSE BILL 61  
2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**  
3 INTRODUCED BY  
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10 AN ACT

11 RELATING TO CRIMINAL LAW; PROVIDING THAT THE PENALTY FOR A  
12 FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS FIVE  
13 YEARS IMPRISONMENT AND THE PENALTY FOR A SERIOUS VIOLENT FELON  
14 IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS SIX YEARS  
15 IMPRISONMENT.  
16

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

18 SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,  
19 Chapter 225, Section 1, as amended) is amended to read:

20 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
21 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

22 A. It is unlawful for the following persons to  
23 receive, transport or possess a firearm or destructive device  
24 in this state:

- 25 (1) a felon;

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1 (2) a person subject to an order of protection  
2 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

3 (3) a person convicted of any of the following  
4 crimes:

5 (a) battery against a household member  
6 pursuant to Section 30-3-15 NMSA 1978;

7 (b) criminal damage to property of a  
8 household member pursuant to Section 30-3-18 NMSA 1978;

9 (c) a first offense of stalking pursuant  
10 to Section 30-3A-3 NMSA 1978; or

11 (d) a crime listed in 18 U.S.C. 921.

12 B. A felon found in possession of a firearm or  
13 destructive device shall be guilty of a third degree felony and  
14 shall be sentenced in accordance with the provisions of the  
15 Criminal Sentencing Act.

16 C. A serious violent felon that is found to be in  
17 possession of a firearm or destructive device shall be guilty  
18 of a third degree felony and [~~notwithstanding the provisions of~~  
19 ~~Section 31-18-15 NMSA 1978~~] shall be sentenced [~~to a basic term~~  
20 ~~of six years imprisonment~~] in accordance with the provisions of  
21 the Criminal Sentencing Act.

22 D. Any person subject to an order of protection  
23 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted  
24 of a crime listed in Paragraph (3) of Subsection A of this  
25 section who receives, transports or possesses a firearm or

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1 destructive device is guilty of a misdemeanor.

2 E. As used in this section:

3 (1) except as provided in Paragraph (2) of  
4 this subsection, "destructive device" means:

5 (a) any explosive, incendiary or poison  
6 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge  
7 of more than four ounces; 4) missile having an explosive or  
8 incendiary charge of more than one-fourth ounce; 5) mine; or 6)  
9 similar device;

10 (b) any type of weapon by whatever name  
11 known that will, or that may be readily converted to, expel a  
12 projectile by the action of an explosive or other propellant,  
13 the barrel or barrels of which have a bore of more than one-  
14 half inch in diameter, except a shotgun or shotgun shell that  
15 is generally recognized as particularly suitable for sporting  
16 purposes; or

17 (c) any combination of parts either  
18 designed or intended for use in converting any device into a  
19 destructive device as defined in this paragraph and from which  
20 a destructive device may be readily assembled;

21 (2) the term "destructive device" does not  
22 include any device that is neither designed nor redesigned for  
23 use as a weapon or any device, although originally designed for  
24 use as a weapon, that is redesigned for use as a signaling,  
25 pyrotechnic, line throwing, safety or similar device;

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1 (3) "felon" means a person convicted of a  
2 felony offense by a court of the United States or of any state  
3 or political subdivision thereof and:

4 (a) less than ten years have passed  
5 since the person completed serving a sentence or period of  
6 probation for the felony conviction, whichever is later;

7 (b) the person has not been pardoned for  
8 the felony conviction by the proper authority; and

9 (c) the person has not received a  
10 deferred sentence;

11 (4) "firearm" means any weapon that will or is  
12 designed to or may readily be converted to expel a projectile  
13 by the action of an explosion or the frame or receiver of any  
14 such weapon; and

15 (5) "serious violent felon" means a person  
16 convicted of an offense enumerated in Subparagraphs (a) through  
17 [~~(n)~~] (o) of Paragraph (4) of Subsection L of Section 33-2-34  
18 NMSA 1978; provided that:

19 (a) less than ten years have passed  
20 since the person completed serving a sentence or a period of  
21 probation for the felony conviction, whichever is later;

22 (b) the person has not been pardoned for  
23 the felony conviction by the proper authority; and

24 (c) the person has not received a  
25 deferred sentence and completed the total term of deferment as

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1 provided in Section 31-20-9 NMSA 1978."

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

4 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
5 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
6 DEDUCTIONS.--

7 A. As used in a statute that establishes a  
8 noncapital felony, the following defined felony classifications  
9 and associated basic sentences of imprisonment are as follows:

10 FELONY CLASSIFICATION	BASIC SENTENCE
11 first degree felony	
12 resulting in the death	
13 of a child	life imprisonment
14 first degree felony for	
15 aggravated criminal sexual	
16 penetration	life imprisonment
17 first degree felony	eighteen years imprisonment
18 second degree felony	
19 resulting in the death of	
20 a human being	fifteen years imprisonment
21 second degree felony for a	
22 sexual offense against a	
23 child	fifteen years imprisonment
24 second degree felony for	
25 sexual exploitation of	

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1	children	twelve years imprisonment
2	second degree felony	nine years imprisonment
3	third degree felony resulting	
4	in the death of a human being	six years imprisonment
5	third degree felony for a	
6	sexual offense against a	
7	child	six years imprisonment
8	third degree felony for sexual	
9	exploitation of children	eleven years imprisonment
10	<u>third degree felony for</u>	
11	<u>possession of a firearm or</u>	
12	<u>destructive device by a felon</u>	
13	<u>pursuant to Subsection B of</u>	
14	<u>Section 30-7-16 NMSA 1978</u>	<u>five years imprisonment</u>
15	<u>third degree felony for</u>	
16	<u>possession of a firearm or</u>	
17	<u>destructive device by a</u>	
18	<u>serious violent felon pursuant</u>	
19	<u>to Subsection C of Section</u>	
20	<u>30-7-16 NMSA 1978</u>	<u>six years imprisonment</u>
21	third degree felony	three years imprisonment
22	fourth degree felony for	
23	sexual exploitation of	
24	children	ten years imprisonment
25	fourth degree felony	eighteen months imprisonment.

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1           B. The appropriate basic sentence of imprisonment  
2 shall be imposed upon a person convicted and sentenced pursuant  
3 to Subsection A of this section, unless the court alters the  
4 sentence pursuant to the provisions of the Criminal Sentencing  
5 Act.

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

25           D. When a court imposes a sentence of imprisonment

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

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

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

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

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

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

25 (5) for a second degree felony for a sexual

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1 offense against a child, twelve thousand five hundred dollars  
2 (\$12,500);

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

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

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

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

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

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

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

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

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1 information regarding those provisions, the failure to inform  
2 or the error shall not provide a basis for a writ of habeas  
3 corpus.

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

17 SECTION 3. EFFECTIVE DATE.--The effective date of the  
18 provisions of this act is July 1, 2023.