

1 HOUSE BILL 258

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 John Block

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10 AN ACT

11 RELATING TO ABORTION; CREATING A NEW CRIMINAL OFFENSE FOR
12 HEALTH CARE PROVIDERS PERFORMING CERTAIN ABORTIONS; IMPOSING
13 PENALTIES.

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

16 SECTION 1. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] PROHIBITION ON CERTAIN ABORTIONS.--

19 A. A health care provider who knowingly performs an
20 abortion and thereby kills a human fetus without determining,
21 according to standard medical practice, whether the fetus has a
22 detectable heartbeat; without informing the pregnant woman of
23 the results of that determination; or after determining,
24 according to standard medical practice, that the fetus has a
25 heartbeat is guilty of a third degree felony resulting in the

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1 death of a human fetus.

2 B. A health care provider who fails to follow the
3 procedures pursuant to Subsection A of this section shall be
4 deemed to have breached the duty of care to the patient.

5 C. Nothing in this section shall prevent the
6 patient from exhausting any other available remedies.

7 D. Nothing in this section shall be construed to
8 allow the prosecution of a woman who receives an abortion."

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

11 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
12 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
13 DEDUCTIONS.--

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

17 FELONY CLASSIFICATION	BASIC SENTENCE
18 first degree felony	
19 resulting in the death	
20 of a child	life imprisonment
21 first degree felony for	
22 aggravated criminal sexual	
23 penetration	life imprisonment
24 first degree felony	eighteen years imprisonment
25 second degree felony	

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1 resulting in the death of
2 a human being fifteen years imprisonment
3 second degree felony for a
4 sexual offense against a
5 child fifteen years imprisonment
6 second degree felony for
7 sexual exploitation of
8 children twelve years imprisonment
9 second degree felony nine years imprisonment
10 third degree felony resulting
11 in the death of a human fetus five years imprisonment
12 third degree felony resulting
13 in the death of a human being six years imprisonment
14 third degree felony for a
15 sexual offense against a
16 child six years imprisonment
17 third degree felony for sexual
18 exploitation of children eleven years imprisonment
19 third degree felony three years imprisonment
20 fourth degree felony for
21 sexual exploitation of
22 children ten years imprisonment
23 fourth degree felony eighteen months imprisonment.

24 B. The appropriate basic sentence of imprisonment
25 shall be imposed upon a person convicted and sentenced pursuant

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1 to Subsection A of this section, unless the court alters the
2 sentence pursuant to the provisions of the Criminal Sentencing
3 Act.

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

23 D. When a court imposes a sentence of imprisonment
24 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
25 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
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1 imprisonment provided pursuant to the provisions of Subsection
2 A of this section, the period of parole shall be served in
3 accordance with the provisions of Section 31-21-10 NMSA 1978
4 for the degree of felony for the basic sentence for which the
5 inmate was convicted. For the purpose of designating a period
6 of parole, a court shall not consider that the basic sentence
7 of imprisonment was suspended or deferred and that the inmate
8 served a period of imprisonment pursuant to the provisions of
9 the Criminal Sentencing Act.

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

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

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

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

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

23 (5) for a second degree felony for a sexual
24 offense against a child, twelve thousand five hundred dollars
25 (\$12,500);

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- 1 (6) for a second degree felony for sexual
2 exploitation of children, five thousand dollars (\$5,000);
3 (7) for a second degree felony, ten thousand
4 dollars (\$10,000);
5 (8) for a third degree felony resulting in the
6 death of a human being, five thousand dollars (\$5,000);
7 (9) for a third degree felony for a sexual
8 offense against a child, five thousand dollars (\$5,000);
9 (10) for a third degree felony for sexual
10 exploitation of children, five thousand dollars (\$5,000);
11 (11) for a third or fourth degree felony, five
12 thousand dollars (\$5,000); or
13 (12) for a fourth degree felony for sexual
14 exploitation of children, five thousand dollars (\$5,000).

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

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1 corpus.

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