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HOUSE BILL 274

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Elaine Sena Cortez and Jay C. Block and Rod Montoya
and John Block and Alan T. Martinez

AN ACT

RELATING TO CRIME; MAKING THE TRAFFICKING OF FENTANYL A FIRST
DEGREE FELONY WITH A SENTENCE OF LIFE IN PRISON.

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

SECTION 1. Section 30-31-20 NMSA 1978 (being Laws 1972,
Chapter 84, Section 20, as amended) is amended to read:

"30-31-20. TRAFFICKING CONTROLLED SUBSTANCES--
VIOLATION.--

A. As used in the Controlled Substances Act,
"traffic" means the:

(1) manufacture of a controlled substance
enumerated in Schedules I through V or a controlled substance
analog [~~as defined in Subsection W of Section 30-31-2 NMSA~~
~~1978~~];

(2) distribution, sale, barter or giving away

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1 of:

2 (a) a controlled substance enumerated in
3 Schedule I or II that is a narcotic drug;

4 (b) a controlled substance analog of a
5 controlled substance enumerated in Schedule I or II that is a
6 narcotic drug; or

7 (c) methamphetamine, its salts, isomers
8 and salts of isomers; or

9 (3) possession with intent to distribute:

10 (a) a controlled substance enumerated in
11 Schedule I or II that is a narcotic drug;

12 (b) a controlled substance analog of a
13 controlled substance enumerated in Schedule I or II that is a
14 narcotic drug; or

15 (c) methamphetamine, its salts, isomers
16 and salts of isomers.

17 B. Except as authorized by the Controlled
18 Substances Act, it is unlawful for a person to intentionally
19 traffic. A person who violates this subsection shall be
20 sentenced pursuant to Section 31-18-15 NMSA 1978 and is:

21 (1) for the first and subsequent offenses when
22 the controlled substance is fentanyl, guilty of a first degree
23 felony for trafficking fentanyl;

24 [~~(1)~~] (2) for [the first offense] all other
25 first offenses, guilty of a second degree felony [and shall be

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1 ~~sentenced pursuant to the provisions of Section 31-18-15 NMSA~~
2 ~~1978]; and~~

3 [~~(2)~~] (3) for [~~the second and~~] all other
4 subsequent offenses, guilty of a first degree felony [~~and shall~~
5 ~~be sentenced pursuant to the provisions of Section 31-18-15~~
6 ~~NMSA 1978]~~.

7 C. A person who knowingly violates Subsection B of
8 this section within a drug-free school zone excluding private
9 property residentially zoned or used primarily as a residence
10 is guilty of a first degree felony and shall be sentenced
11 pursuant to the provisions of Section 31-18-15 NMSA 1978."

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

14 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
15 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
16 DEDUCTIONS.--

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

| FELONY CLASSIFICATION | BASIC SENTENCE |
|----------------------------|-------------------|
| first degree felony | |
| resulting in the death | |
| of a child | life imprisonment |
| first degree felony for | |
| aggravated criminal sexual | |

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|----|--------------------------------|-----------------------------|
| 1 | penetration | life imprisonment |
| 2 | <u>first degree felony for</u> | |
| 3 | <u>trafficking fentanyl</u> | <u>life imprisonment</u> |
| 4 | first degree felony | eighteen years imprisonment |
| 5 | second degree felony | |
| 6 | resulting in the death of | |
| 7 | a human being | eighteen years imprisonment |
| 8 | second degree felony for a | |
| 9 | sexual offense against a | |
| 10 | child | fifteen years imprisonment |
| 11 | second degree felony for | |
| 12 | sexual exploitation of | |
| 13 | children | twelve years imprisonment |
| 14 | second degree felony | nine years imprisonment |
| 15 | third degree felony resulting | |
| 16 | in the death of a human being | six years imprisonment |
| 17 | third degree felony for a | |
| 18 | sexual offense against a | |
| 19 | child | six years imprisonment |
| 20 | third degree felony for sexual | |
| 21 | exploitation of children | eleven years imprisonment |
| 22 | third degree felony | three years imprisonment |
| 23 | fourth degree felony for | |
| 24 | sexual exploitation of | |
| 25 | children | ten years imprisonment |

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1 fourth degree felony eighteen months imprisonment.

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

7 C. A period of parole shall be imposed only for
8 felony convictions wherein a person is sentenced to
9 imprisonment of more than one year, unless the parties to a
10 proceeding agree that a period of parole should be imposed. If
11 a period of parole is imposed, the court shall include in the
12 judgment and sentence of each person convicted and sentenced to
13 imprisonment in a corrections facility designated by the
14 corrections department authority for a period of parole to be
15 served in accordance with the provisions of Section 31-21-10
16 NMSA 1978 after the completion of any actual time of
17 imprisonment and authority to require, as a condition of
18 parole, the payment of the costs of parole services and
19 reimbursement to a law enforcement agency or local crime
20 stopper program in accordance with the provisions of that
21 section. If imposed, the period of parole shall be deemed to
22 be part of the sentence of the convicted person in addition to
23 the basic sentence imposed pursuant to Subsection A of this
24 section together with alterations, if any, pursuant to the
25 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."