

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 166

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO CRIMINAL SENTENCING; REDEFINING PENALTIES FOR CHILD
ABUSE; IMPOSING A LIFE SENTENCE FOR INTENTIONAL CHILD ABUSE
RESULTING IN DEATH.

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

Section 1. Section 30-6-1 NMSA 1978 (being Laws 1973,
Chapter 360, Section 10, as amended by Laws 2004, Chapter 10,
Section 1 and by Laws 2004, Chapter 11, Section 1) is amended
to read:

"30-6-1. ABANDONMENT OR ABUSE OF A CHILD. --

A. As used in this section:

(1) "child" means a person who is less than
eighteen years of age;

(2) "neglect" means that a child is without
proper parental care and control of subsistence, education,

1 medical or other care or control necessary for his well-being
2 because of the faults or habits of his parents, guardian or
3 custodian or their neglect or refusal, when able to do so, to
4 provide them; and

5 (3) "negligently" refers to criminal
6 negligence and means that a person knew or should have known of
7 the danger involved and acted with a reckless disregard for the
8 safety or health of the child.

9 B. Abandonment of a child consists of the parent,
10 guardian or custodian of a child intentionally leaving or
11 abandoning the child under circumstances whereby the child may
12 or does suffer neglect. Whoever commits abandonment of a child
13 is guilty of a misdemeanor, unless the abandonment results in
14 the child's death or great bodily harm, in which case he is
15 guilty of a second degree felony.

16 C. A parent, guardian or custodian who leaves an
17 infant less than ninety days old in compliance with the Safe
18 Haven for Infants Act shall not be prosecuted for abandonment
19 of a child.

20 D. Abuse of a child consists of a person knowingly,
21 intentionally or negligently, and without justifiable cause,
22 causing or permitting a child to be:

23 (1) placed in a situation that may endanger
24 the child's life or health;

25 (2) tortured, cruelly confined or cruelly

1 punished; or

2 (3) exposed to the inclemency of the weather.

3 E. Whoever commits abuse of a child that does not
4 result in the child's death or great bodily harm is, for a
5 first offense, guilty of a third degree felony and for second
6 and subsequent offenses is guilty of a second degree felony.

7 ~~[If the abuse results in great bodily harm or death to the~~
8 ~~child, he is guilty of a first degree felony.]~~

9 F. Whoever commits negligent or intentional abuse
10 of a child that results in great bodily harm to the child is,
11 for a first offense, guilty of a second degree felony and for
12 second and subsequent offenses, guilty of a first degree
13 felony.

14 G. Whoever commits negligent abuse of a child that
15 results in the death of the child is guilty of a first degree
16 felony.

17 H. Whoever commits intentional abuse of a child
18 that results in the child's death is guilty of a first degree
19 felony resulting in the death of a human being.

20 ~~[F.]~~ I. Evidence that demonstrates that a child has
21 been knowingly, intentionally or negligently allowed to enter
22 or remain in a motor vehicle, building or any other premises
23 that contains chemicals and equipment used or intended for use
24 in the manufacture of a controlled substance shall be deemed
25 prima facie evidence of abuse of the child.

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1 ~~[6-]~~ J. A person who leaves an infant less than
2 ninety days old at a hospital may be prosecuted for abuse of
3 the infant for actions of the person occurring before the
4 infant was left at the hospital."

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

7 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
8 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
9 DEDUCTIONS.--

10 A. If a person is convicted of a noncapital felony,
11 the basic sentence of imprisonment is as follows:

12 (1) for a first degree felony resulting in the
13 death of a human being, life imprisonment;

14 ~~[(1)]~~ (2) for a first degree felony, eighteen
15 years imprisonment;

16 ~~[(2)]~~ (3) for a second degree felony resulting
17 in the death of a human being, fifteen years imprisonment;

18 ~~[(3)]~~ (4) for a second degree felony for a
19 sexual offense against a child, fifteen years imprisonment;

20 ~~[(4)]~~ (5) for a second degree felony, nine
21 years imprisonment;

22 ~~[(5)]~~ (6) for a third degree felony resulting
23 in the death of a human being, six years imprisonment;

24 ~~[(6)]~~ (7) for a third degree felony for a
25 sexual offense against a child, six years imprisonment;

1 [~~(7)~~] (8) for a third degree felony, three
2 years imprisonment; or

3 [~~(8)~~] (9) for a fourth degree felony, eighteen
4 months imprisonment.

5 B. The appropriate basic sentence of imprisonment
6 shall be imposed upon a person convicted and sentenced pursuant
7 to Subsection A of this section, unless the court alters the
8 sentence pursuant to the provisions of Section 31-18-15.1,
9 31-18-16, 31-18-16.1 or 31-18-17 NMSA 1978.

10 C. The court shall include in the judgment and
11 sentence of each person convicted and sentenced to imprisonment
12 in a corrections facility designated by the corrections
13 department authority for a period of parole to be served in
14 accordance with the provisions of Section 31-21-10 NMSA 1978
15 after the completion of any actual time of imprisonment and
16 authority to require, as a condition of parole, the payment of
17 the costs of parole services and reimbursement to a law
18 enforcement agency or local crime stopper program in accordance
19 with the provisions of that section. The period of parole
20 shall be deemed to be part of the sentence of the convicted
21 person in addition to the basic sentence imposed pursuant to
22 Subsection A of this section together with alterations, if any,
23 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
24 31-18-16.1 or 31-18-17 NMSA 1978.

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,
2 31-18-16.1 or 31-18-17 NMSA 1978 and suspends or defers the
3 basic sentence of imprisonment provided pursuant to the
4 provisions of Subsection A of this section, the period of
5 parole shall be served in accordance with the provisions of
6 Section 31-21-10 NMSA 1978 for the degree of felony for the
7 basic sentence for which the inmate was convicted. For the
8 purpose of designating a period of parole, a court shall not
9 consider that the basic sentence of imprisonment was suspended
10 or deferred and that the inmate served a period of imprisonment
11 pursuant to the provisions of Section 31-18-15.1, 31-18-16,
12 31-18-16.1 or 31-18-17 NMSA 1978.

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 human being, seventeen thousand five hundred dollars
17 (\$17,500);

18 [~~(1)~~] (2) for a first degree felony, fifteen
19 thousand dollars (\$15,000);

20 [~~(2)~~] (3) for a second degree felony resulting
21 in the death of a human being, twelve thousand five hundred
22 dollars (\$12,500);

23 [~~(3)~~] (4) for a second degree felony for a
24 sexual offense against a child, twelve thousand five hundred
25 dollars (\$12,500);

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1 [~~(4)~~] (5) for a second degree felony, ten
2 thousand dollars (\$10,000);

3 [~~(5)~~] (6) for a third degree felony resulting
4 in the death of a human being, five thousand dollars (\$5,000);

5 [~~(6)~~] (7) for a third degree felony for a
6 sexual offense against a child, five thousand dollars (\$5,000);
7 or

8 [~~(7)~~] (8) for a third or fourth degree felony,
9 five thousand dollars (\$5,000).

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

22 G. No later than October 31 of each year, the New
23 Mexico sentencing commission shall provide a written report to
24 the secretary of corrections, all New Mexico criminal court
25 judges, the administrative office of the district attorneys and

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1 the chief public defender. The report shall specify the
2 average reduction in the sentence of imprisonment for serious
3 violent offenses and nonviolent offenses, as defined in Section
4 33-2-34 NMSA 1978, due to meritorious deductions earned by
5 prisoners during the previous fiscal year pursuant to the
6 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
7 NMSA 1978. The corrections department shall allow the
8 commission access to documents used by the department to
9 determine earned meritorious deductions for prisoners. "

10 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
11 Chapter 28, Section 1, as amended) is amended to read:

12 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

13 A. An inmate of an institution who was sentenced to
14 life imprisonment as the result of the commission of a capital
15 felony, who was sentenced to life imprisonment as the result of
16 a conviction for a first degree felony resulting in the death
17 of a human being, who was convicted of three violent felonies
18 and sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA
19 1978 or who was convicted of two violent sexual offenses and
20 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
21 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
22 parole hearing after he has served thirty years of his
23 sentence. Before ordering the parole of an inmate sentenced to
24 life imprisonment, the board shall:

25 (1) interview the inmate at the institution

1 where he is committed;

2 (2) consider all pertinent information
3 concerning the inmate, including:

4 (a) the circumstances of the offense;

5 (b) mitigating and aggravating
6 circumstances;

7 (c) whether a deadly weapon was used in
8 the commission of the offense;

9 (d) whether the inmate is a habitual
10 offender;

11 (e) the reports filed under Section
12 31-21-9 NMSA 1978; and

13 (f) the reports of such physical and
14 mental examinations as have been made while in an institution;

15 (3) make a finding that a parole is in the
16 best interest of society and the inmate; and

17 (4) make a finding that the inmate is able and
18 willing to fulfill the obligations of a law-abiding citizen.

19 If parole is denied, the inmate sentenced to life
20 imprisonment shall again become entitled to a parole hearing at
21 two-year intervals. The board may, on its own motion, reopen
22 any case in which a hearing has already been granted and parole
23 denied.

24 B. Unless the board finds that it is in the best
25 interest of society and the parolee to reduce the period of

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1 parole, a person who was convicted of a capital felony shall be
2 required to undergo a minimum period of parole of five years.
3 During the period of parole, the person shall be under the
4 guidance and supervision of the board.

5 C. Except for sex offenders as provided in Section
6 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
7 second or third degree felony and who has served the sentence
8 of imprisonment imposed by the court in an institution
9 designated by the corrections department shall be required to
10 undergo a two-year period of parole. An inmate who was
11 convicted of a fourth degree felony and who has served the
12 sentence of imprisonment imposed by the court in an institution
13 designated by the corrections department shall be required to
14 undergo a one-year period of parole. During the period of
15 parole, the person shall be under the guidance and supervision
16 of the board.

17 D. Every person while on parole shall remain in the
18 legal custody of the institution from which he was released,
19 but shall be subject to the orders of the board. The board
20 shall furnish to each inmate as a prerequisite to his release
21 under its supervision a written statement of the conditions of
22 parole that shall be accepted and agreed to by the inmate as
23 evidenced by his signature affixed to a duplicate copy to be
24 retained in the files of the board. The board shall also
25 require as a prerequisite to release the submission and

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1 approval of a parole plan. If an inmate refuses to affix his
2 signature to the written statement of the conditions of his
3 parole or does not have an approved parole plan, he shall not
4 be released and shall remain in the custody of the institution
5 in which he has served his sentence, excepting parole, until
6 such time as the period of parole he was required to serve,
7 less meritorious deductions, if any, expires, at which time he
8 shall be released from that institution without parole, or
9 until such time that he evidences his acceptance and agreement
10 to the conditions of parole as required or receives approval
11 for his parole plan or both. Time served from the date that an
12 inmate refuses to accept and agree to the conditions of parole
13 or fails to receive approval for his parole plan shall reduce
14 the period, if any, to be served under parole at a later date.
15 If the district court has ordered that the inmate make
16 restitution to a victim as provided in Section 31-17-1 NMSA
17 1978, the board shall include restitution as a condition of
18 parole. The board shall also personally apprise the inmate of
19 the conditions of parole and his duties relating thereto.

20 E. When a person on parole has performed the
21 obligations of his release for the period of parole provided in
22 this section, the board shall make a final order of discharge
23 and issue him a certificate of discharge.

24 F. Pursuant to the provisions of Section 31-18-15
25 NMSA 1978, the board shall require the inmate as a condition of

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1 parole:

2 (1) to pay the actual costs of his parole
3 services to the adult probation and parole division of the
4 corrections department for deposit to the corrections
5 department intensive supervision fund not exceeding one
6 thousand eight hundred dollars (\$1,800) annually to be paid in
7 monthly installments of not less than twenty-five dollars
8 (\$25.00) and not more than one hundred fifty dollars (\$150), as
9 set by the appropriate district supervisor of the adult
10 probation and parole division, based upon the financial
11 circumstances of the defendant. The defendant's payment of the
12 supervised parole costs shall not be waived unless the board
13 holds an evidentiary hearing and finds that the defendant is
14 unable to pay the costs. If the board waives the defendant's
15 payment of the supervised parole costs and the defendant's
16 financial circumstances subsequently change so that the
17 defendant is able to pay the costs, the appropriate district
18 supervisor of the adult probation and parole division shall
19 advise the board and the board shall hold an evidentiary
20 hearing to determine whether the waiver should be rescinded;
21 and

22 (2) to reimburse a law enforcement agency or
23 local crime stopper program for the amount of any reward paid
24 by the agency or program for information leading to his arrest,
25 prosecution or conviction.

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