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SENATE BILL 236

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

INTRODUCED BY

Mary Jane M Garcia

AN ACT

**RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTY FOR
CHILD ABUSE RESULTING IN DEATH WHEN THE CHILD IS UNDER TWELVE
YEARS OLD.**

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,**

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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

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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 abuse of a child who is twelve
10 years of age or older that results in great bodily harm or
11 death to the child is guilty of a first degree felony.

12 G. Whoever commits abuse of a child who is less
13 than twelve years of age that results in great bodily harm to
14 the child is guilty of a first degree felony.

15 H. Whoever commits abuse of a child who is less
16 than twelve years of age that results in the child's death is
17 guilty of a first degree felony resulting in the death of a
18 human being.

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

25 ~~[G.]~~ J. A person who leaves an infant less than

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1 ninety days old at a hospital may be prosecuted for abuse of
2 the infant for actions of the person occurring before the
3 infant was left at the hospital. "

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

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

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

11 (1) for a first degree felony resulting in the
12 death of a human being, twenty-six years imprisonment;

13 [~~(1)~~] (2) for a first degree felony, eighteen
14 years imprisonment;

15 [~~(2)~~] (3) for a second degree felony resulting
16 in the death of a human being, fifteen years imprisonment;

17 [~~(3)~~] (4) for a second degree felony for a
18 sexual offense against a child, fifteen years imprisonment;

19 [~~(4)~~] (5) for a second degree felony, nine
20 years imprisonment;

21 [~~(5)~~] (6) for a third degree felony resulting
22 in the death of a human being, six years imprisonment;

23 [~~(6)~~] (7) for a third degree felony for a
24 sexual offense against a child, six years imprisonment;

25 [~~(7)~~] (8) for a third degree felony, three

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1 years imprisonment; or

2 [~~(8)~~] (9) for a fourth degree felony, eighteen
3 months imprisonment.

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

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

24 D. When a court imposes a sentence of imprisonment
25 pursuant to the provisions of Section 31-18-15.1, 31-18-16

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1 ~~[31-18-16.1]~~ or 31-18-17 NMSA 1978 and suspends or defers the
2 basic sentence of imprisonment provided pursuant to the
3 provisions of Subsection A of this section, the period of
4 parole shall be served in accordance with the provisions of
5 Section 31-21-10 NMSA 1978 for the degree of felony for the
6 basic sentence for which the inmate was convicted. For the
7 purpose of designating a period of parole, a court shall not
8 consider that the basic sentence of imprisonment was suspended
9 or deferred and that the inmate served a period of imprisonment
10 pursuant to the provisions of Section 31-18-15.1, 31-18-16
11 ~~[31-18-16.1]~~ or 31-18-17 NMSA 1978.

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 human being, seventeen thousand five hundred dollars
16 (\$17,500);

17 ~~[(1)]~~ (2) for a first degree felony, fifteen
18 thousand dollars (\$15,000);

19 ~~[(2)]~~ (3) for a second degree felony resulting
20 in the death of a human being, twelve thousand five hundred
21 dollars (\$12,500);

22 ~~[(3)]~~ (4) for a second degree felony for a
23 sexual offense against a child, twelve thousand five hundred
24 dollars (\$12,500);

25 ~~[(4)]~~ (5) for a second degree felony, ten

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1 thousand dollars (\$10,000);

2 [~~(5)~~] (6) for a third degree felony resulting
3 in the death of a human being, five thousand dollars (\$5,000);

4 [~~(6)~~] (7) for a third degree felony for a
5 sexual offense against a child, five thousand dollars (\$5,000);
6 or

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

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

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

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

9 Section 3. Section 33-2-34 NMSA 1978 (being Laws 1999,
10 Chapter 238, Section 1, as amended) is amended to read:

11 "33-2-34. ELIGIBILITY FOR EARNED MERITORIOUS
12 DEDUCTIONS. --

13 A. To earn meritorious deductions, a prisoner
14 confined in a correctional facility designated by the
15 corrections department must be an active participant in
16 programs recommended for the prisoner by the classification
17 committee and approved by the warden. Meritorious deductions
18 shall not exceed the following amounts:

19 (1) for a prisoner confined for committing a
20 serious violent offense, up to a maximum of four days per month
21 of time served;

22 (2) for a prisoner confined for committing a
23 nonviolent offense, up to a maximum of thirty days per month of
24 time served;

25 (3) for a prisoner confined following

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1 revocation of parole for the alleged commission of a new felony
2 offense or for absconding from parole, up to a maximum of four
3 days per month of time served during the parole term following
4 revocation; and

5 (4) for a prisoner confined following
6 revocation of parole for a reason other than the alleged
7 commission of a new felony offense or absconding from parole,
8 up to a maximum of eight days per month of time served during
9 the parole term following revocation.

10 B. A prisoner may earn meritorious deductions upon
11 recommendation by the classification committee, based upon the
12 prisoner's active participation in approved programs and the
13 quality of the prisoner's participation in those approved
14 programs. A prisoner may not earn meritorious deductions
15 unless the recommendation of the classification committee is
16 approved by the warden.

17 C. If a prisoner's active participation in approved
18 programs is interrupted by a lockdown at a correctional
19 facility, ~~[he]~~ the prisoner may continue to be awarded
20 meritorious deductions at the rate ~~[he]~~ the prisoner was
21 earning meritorious deductions prior to the lockdown, unless
22 the warden determines that the prisoner's conduct contributed
23 to the initiation or continuance of the lockdown.

24 D. A prisoner confined in a correctional facility
25 designated by the corrections department is eligible for lump-

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1 sum meritorious deductions as follows:

2 (1) for successfully completing an approved
3 vocational, substance abuse or mental health program, one
4 month; except when the prisoner has a demonstrable physical,
5 mental health or developmental disability that prevents the
6 prisoner from successfully earning a general education diploma,
7 in which case, the prisoner shall be awarded three months;

8 (2) for earning a general education diploma,
9 three months;

10 (3) for earning an associate's degree, four
11 months;

12 (4) for earning a bachelor's degree, five
13 months;

14 (5) for earning a graduate qualification, five
15 months; and

16 (6) for engaging in a heroic act of saving
17 life or property, engaging in extraordinary conduct for the
18 benefit of the state or the public that is at great expense,
19 risk or effort on behalf of the ~~[inmate]~~ prisoner, or engaging
20 in extraordinary conduct far in excess of normal program
21 assignments that demonstrates the prisoner's commitment to
22 ~~[rehabilitate himself]~~ rehabilitation. The classification
23 committee and the warden may recommend the number of days to be
24 awarded in each case based upon the particular merits, but any
25 award shall be determined by the director of the adult

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1 institutions division of the corrections department.

2 E. Lump-sum meritorious deductions, provided in
3 Paragraphs (1) through (6) of Subsection D of this section, may
4 be awarded in addition to the meritorious deductions provided
5 in Subsections A and B of this section. Lump-sum meritorious
6 deductions shall not exceed one year per award and shall not
7 exceed a total of one year for all lump-sum meritorious
8 deductions awarded in any consecutive twelve-month period.

9 F. A prisoner is not eligible to earn meritorious
10 deductions if the prisoner:

11 (1) disobeys an order to perform labor,
12 pursuant to Section 33-8-4 NMSA 1978;

13 (2) is in disciplinary segregation;

14 (3) is within the first sixty days of receipt
15 by the corrections department; or

16 (4) is not an active participant in programs
17 recommended and approved for ~~him~~ the prisoner by the
18 classification committee.

19 G. The provisions of this section shall not be
20 interpreted as providing eligibility to earn meritorious
21 deductions from a sentence of life imprisonment or a sentence
22 of death.

23 H. The corrections department shall promulgate
24 rules to implement the provisions of this section, and the
25 rules shall be matters of public record. A concise summary of

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1 the rules shall be provided to each prisoner, and each prisoner
2 shall receive a quarterly statement of the meritorious
3 deductions earned.

4 I. A New Mexico prisoner confined in a federal or
5 out-of-state correctional facility is eligible to earn
6 meritorious deductions for active participation in programs on
7 the basis of the prisoner's conduct and program reports
8 furnished by that facility to the corrections department. All
9 decisions regarding the award and forfeiture of meritorious
10 deductions at such facility are subject to final approval by
11 the director of the adult institutions division of the
12 corrections department or the director's designee.

13 J. In order to be eligible for meritorious
14 deductions, a prisoner confined in a federal or out-of-state
15 correctional facility designated by the corrections department
16 must actively participate in programs that are available. If a
17 federal or out-of-state correctional facility does not have
18 programs available for a prisoner, the prisoner may be awarded
19 meritorious deductions at the rate the prisoner could have
20 earned meritorious deductions if the prisoner had actively
21 participated in programs.

22 K. A prisoner confined in a correctional facility
23 in New Mexico that is operated by a private company, pursuant
24 to a contract with the corrections department, is eligible to
25 earn meritorious deductions in the same manner as a prisoner

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1 confined in state-run correctional facilities. All decisions
2 regarding the award or forfeiture of meritorious deductions at
3 such facilities are subject to final approval by the director
4 of the adult institutions division of the corrections
5 department or the director's designee.

6 L. As used in this section:

7 (1) "active participant" means a prisoner who
8 has begun, and is regularly engaged in, approved programs;

9 (2) "program" means work, vocational,
10 educational, substance abuse and mental health programs,
11 approved by the classification committee, that contribute to a
12 prisoner's self-betterment through the development of personal
13 and occupational skills. "Program" does not include
14 recreational activities;

15 (3) "nonviolent offense" means any offense
16 other than a serious violent offense; and

17 (4) "serious violent offense" means:

18 (a) abuse of a child less than twelve
19 years of age resulting in death, as provided in Section 30-6-1
20 NMSA 1978;

21 [~~(a)~~] (b) second degree murder, as
22 provided in Section 30-2-1 NMSA 1978;

23 [~~(b)~~] (c) voluntary manslaughter, as
24 provided in Section 30-2-3 NMSA 1978;

25 [~~(e)~~] (d) third degree aggravated

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1 battery, as provided in Section 30-3-5 NMSA 1978;

2 [~~(d)~~] (e) first degree kidnapping, as
3 provided in Section 30-4-1 NMSA 1978;

4 [~~(e)~~] (f) first and second degree
5 criminal sexual penetration, as provided in Section 30-9-11
6 NMSA 1978;

7 [~~(f)~~] (g) second and third degree
8 criminal sexual contact of a minor, as provided in Section
9 30-9-13 NMSA 1978;

10 [~~(g)~~] (h) first and second degree
11 robbery, as provided in Section 30-16-2 NMSA 1978;

12 [~~(h)~~] (i) second degree aggravated
13 arson, as provided in Section 30-17-6 NMSA 1978;

14 [~~(i)~~] (j) shooting at a dwelling or
15 occupied building, as provided in Section 30-3-8 NMSA 1978;

16 [~~(j)~~] (k) shooting at or from a motor
17 vehicle, as provided in Section 30-3-8 NMSA 1978;

18 [~~(k)~~] (l) aggravated battery upon a
19 peace officer, as provided in Section 30-22-25 NMSA 1978;

20 [~~(l)~~] (m) assault with intent to commit
21 a violent felony upon a peace officer, as provided in Section
22 30-22-23 NMSA 1978;

23 [~~(m)~~] (n) aggravated assault upon a
24 peace officer, as provided in Section 30-22-22 NMSA 1978; and

25 [~~(n)~~] (o) any of the following offenses,

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1 when the nature of the offense and the resulting harm are such
2 that the court judges the crime to be a serious violent offense
3 for the purpose of this section: 1) involuntary manslaughter,
4 as provided in Section 30-2-3 NMSA 1978; 2) fourth degree
5 aggravated assault, as provided in Section 30-3-2 NMSA 1978; 3)
6 third degree assault with intent to commit a violent felony, as
7 provided in Section 30-3-3 NMSA 1978; 4) third and fourth
8 degree aggravated stalking, as provided in Section 30-3A-3.1
9 NMSA 1978; 5) second degree kidnapping, as provided in Section
10 30-4-1 NMSA 1978; 6) second degree abandonment of a child, as
11 provided in Section 30-6-1 NMSA 1978; 7) first, second and
12 third degree abuse of a child, as provided in Section 30-6-1
13 NMSA 1978; 8) third degree dangerous use of explosives, as
14 provided in Section 30-7-5 NMSA 1978; 9) third and fourth
15 degree criminal sexual penetration, as provided in Section
16 30-9-11 NMSA 1978; 10) fourth degree criminal sexual contact of
17 a minor, as provided in Section 30-9-13 NMSA 1978; 11) third
18 degree robbery, as provided in Section 30-16-2 NMSA 1978; 12)
19 third degree homicide by vehicle or great bodily injury by
20 vehicle, as provided in Section 66-8-101 NMSA 1978; and 13)
21 battery upon a peace officer, as provided in Section 30-22-24
22 NMSA 1978.

23 M Except for sex offenders, as provided in Section
24 31-21-10.1 NMSA 1978, an offender sentenced to confinement in a
25 correctional facility designated by the corrections department

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1 who has been released from confinement and who is serving a
2 parole term may be awarded earned meritorious deductions of up
3 to thirty days per month upon recommendation of the parole
4 officer supervising the offender, with the final approval of
5 the adult parole board. The offender must be in compliance
6 with all the conditions of the offender's parole to be eligible
7 for earned meritorious deductions. The adult parole board may
8 remove earned meritorious deductions previously awarded if the
9 offender later fails to comply with the conditions of the
10 offender's parole. The corrections department and the adult
11 parole board shall promulgate rules to implement the provisions
12 of this subsection. "

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