

A MEMORIAL

REQUESTING AN EXAMINATION OF DIFFERENT INTERPRETATIONS OF BASIC SENTENCES AND FINES IMPOSED FOR NONCAPITAL FELONY OFFENSES.

WHEREAS, Section 31-18-15 NMSA 1978 of the Criminal Sentencing Act sets forth the punishment for noncapital felonies by providing for the basic sentence of imprisonment and the fine for each type of felony; and

WHEREAS, degrees of felonies began as first degree, second degree, third degree and fourth degree but have recently evolved to include, for example, first degree felony resulting in the death of a child, second degree felony for a sexual offense against a child and third degree felony resulting in the death of a human being; and

WHEREAS, like the original felony degrees, these additional descriptive degrees of felonies provide for different levels of imprisonment and fines; and

WHEREAS, the punishment for a crime in the Criminal Code is set forth in the statute describing the elements of the crime as either a simple degree of felony or a more descriptive degree of felony; and

WHEREAS, the courts have interpreted the more descriptive degree of felony as a combination of the simple degree of felony plus a finding of fact; for example, the

crime of homicide by vehicle is described in statute as a third degree felony, but the courts have reasoned that because homicide by vehicle results in the death of a human being, the punishment for the crime should be the punishment prescribed for a third degree felony resulting in the death of a human being; and

WHEREAS, interpretation of criminal sentencing by the courts has rendered the punishment for the crime of homicide by vehicle equivalent to that for the crime of voluntary manslaughter, despite the fact that the crime of homicide by vehicle is stated to be a third degree felony and the crime of voluntary manslaughter to be a third degree felony resulting in the death of a human being, and there are other examples of this; and

WHEREAS, there may be a misunderstanding of legislative intent by the courts;

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF NEW MEXICO that a representative from the New Mexico district attorney's association and the New Mexico criminal defense lawyers association be requested to examine this apparent misunderstanding and the feasibility of creating additional simple degrees of felonies rather than descriptive degrees and make recommendations to the appropriate interim legislative committee on how to resolve the issue; and

BE IT FURTHER RESOLVED that copies of this memorial be transmitted to the administrative office of the district attorneys and the executive director of the New Mexico criminal defense lawyers association.