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HOUSE BILL 195

52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE WEAPONS OF MASS
DESTRUCTION ACT; PROVIDING PENALTIES.

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

SECTION 1. ~~[NEW MATERIAL]~~ SHORT TITLE.--Sections 1
through 4 of this act may be cited as the "Weapons of Mass
Destruction Act".

SECTION 2. ~~[NEW MATERIAL]~~ DEFINITIONS.--As used in the
Weapons of Mass Destruction Act:

A. "chemical warfare agent" means:

(1) any weaponized toxic or poisonous
chemical, including the following agents or any analog thereof:

(a) nerve agents, including tabun,
sarin, soman, cyclosarin and the V-series of nerve agents;

(b) choking agents, including phosgene

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1 and diphosgene;

2 (c) blood agents, including hydrogen
3 cyanide, cyanogen chloride and arsine; and

4 (d) blister agents, including sulfur
5 mustard agents, nitrogen mustard agents, arsenicals, urticants
6 and incapacitating agents; or

7 (2) any other dangerous chemical or hazardous
8 material when the chemical or material is designed or intended
9 to cause great bodily harm or death or widespread and
10 substantial damage to property;

11 B. "nuclear agent" means any explosive nuclear
12 device that is designed to cause a nuclear yield;

13 C. "radiological agent" means any:

14 (1) radiological exposure device designed to
15 contain radioactive material that can expose a person to
16 ionizing radiation at a level dangerous to human life;

17 (2) radiological dispersal device that is an
18 explosive device utilized to spread radioactive material; or

19 (3) simple radiological dispersal device that
20 is a container designed to release radiological material as a
21 weapon without an explosion;

22 D. "vector" means a living organism or molecule,
23 including a recombinant molecule or biological product that may
24 be engineered as a result of biotechnology, that is capable of
25 carrying a biological agent or toxin to a host;

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1 E. "weapon of mass destruction" means a chemical
2 warfare agent, weaponized biological warfare agent, nuclear
3 agent or radiological agent;

4 F. "weaponized" means that a substance or agent has
5 been processed, prepared, packaged or synthesized for use as a
6 weapon or munition; and

7 G. "weaponized biological warfare agent" means any
8 weaponized pathogen, toxin, vector or endogenous biological
9 regulator.

10 **SECTION 3. [NEW MATERIAL] POSSESSION, MANUFACTURE AND USE**
11 **OF WEAPONS OF MASS DESTRUCTION.--**

12 A. Any person who knowingly and without lawful
13 authority possesses, develops, manufactures, produces or
14 transfers any weapon of mass destruction is guilty of a second
15 degree felony and shall be sentenced pursuant to Section
16 31-18-15 NMSA 1978.

17 B. Any person who knowingly and intentionally uses
18 against another human being a weapon of mass destruction and
19 thereby causes the death of a person is guilty of a first
20 degree felony for use of a weapon of mass destruction resulting
21 in the death of a person and shall be sentenced pursuant to
22 Section 31-18-15 NMSA 1978.

23 C. Any person who knowingly and intentionally uses
24 against another human being a weapon of mass destruction and
25 thereby causes great bodily harm to a person is guilty of a

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1 first degree felony and shall be sentenced pursuant to Section
2 31-18-15 NMSA 1978.

3 D. Any person who knowingly and intentionally uses
4 a weapon of mass destruction against property with the intent
5 to cause widespread and substantial damage to that property is
6 guilty of a first degree felony and shall be sentenced pursuant
7 to Section 31-18-15 NMSA 1978.

8 E. Any person who, without lawful authority, uses
9 recombinant technology or any other scientific technology to
10 create new pathogens or more virulent forms of existing
11 pathogens for the purpose of creating a weapon of mass
12 destruction is guilty of a first degree felony and shall be
13 sentenced pursuant to Section 31-18-15 NMSA 1978.

14 F. Any person who knowingly and intentionally
15 gives, mails, sends or causes to be sent any false or facsimile
16 weapon of mass destruction to another person, or places or
17 causes to be placed at any location any false or facsimile
18 weapon of mass destruction, with the intent that another person
19 believes that it is a weapon of mass destruction, is guilty of
20 a third degree felony and shall be sentenced pursuant to
21 Section 31-18-15 NMSA 1978.

22 SECTION 4. [NEW MATERIAL] THREAT TO USE A WEAPON OF MASS
23 DESTRUCTION.--No person shall threaten to use a weapon of mass
24 destruction against another human being. A person who violates
25 this section is:

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1 A. for the first offense, guilty of a fourth degree
2 felony and shall be sentenced pursuant to Section 31-18-15 NMSA
3 1978; and

4 B. for a second or subsequent offense, guilty of a
5 third degree felony and shall be sentenced pursuant to Section
6 31-18-15 NMSA 1978.

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

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

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

14 (1) for a first degree felony resulting in the
15 death of a child, life imprisonment;

16 (2) for a first degree felony for aggravated
17 criminal sexual penetration, life imprisonment;

18 (3) for a first degree felony for use of a
19 weapon of mass destruction resulting in the death of a person,
20 life imprisonment;

21 [~~(3)~~] (4) for a first degree felony, eighteen
22 years imprisonment;

23 [~~(4)~~] (5) for a second degree felony resulting
24 in the death of a human being, fifteen years imprisonment;

25 [~~(5)~~] (6) for a second degree felony for a

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1 sexual offense against a child, fifteen years imprisonment;

2 [~~(6)~~] (7) for a second degree felony, nine
3 years imprisonment;

4 [~~(7)~~] (8) for a third degree felony resulting
5 in the death of a human being, six years imprisonment;

6 [~~(8)~~] (9) for a third degree felony for a
7 sexual offense against a child, six years imprisonment;

8 [~~(9)~~] (10) for a third degree felony, three
9 years imprisonment; or

10 [~~(10)~~] (11) for a fourth degree felony,
11 eighteen months imprisonment.

12 B. The appropriate basic sentence of imprisonment
13 shall be imposed upon a person convicted and sentenced pursuant
14 to Subsection A of this section, unless the court alters the
15 sentence pursuant to the provisions of the Criminal Sentencing
16 Act.

17 C. The court shall include in the judgment and
18 sentence of each person convicted and sentenced to imprisonment
19 in a corrections facility designated by the corrections
20 department authority for a period of parole to be served in
21 accordance with the provisions of Section 31-21-10 NMSA 1978
22 after the completion of any actual time of imprisonment and
23 authority to require, as a condition of parole, the payment of
24 the costs of parole services and reimbursement to a law
25 enforcement agency or local crime stopper program in accordance

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1 with the provisions of that section. The period of parole
2 shall be deemed to be part of the sentence of the convicted
3 person in addition to the basic sentence imposed pursuant to
4 Subsection A of this section together with alterations, if any,
5 pursuant to the provisions of the Criminal Sentencing Act.

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

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

20 (1) for a first degree felony resulting in the
21 death of a child, seventeen thousand five hundred dollars
22 (\$17,500);

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

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1 (3) for a first degree felony for use of a
2 weapon of mass destruction resulting in the death of a person,
3 seventeen thousand five hundred dollars (\$17,500);

4 [~~(3)~~] (4) for a first degree felony, fifteen
5 thousand dollars (\$15,000);

6 [~~(4)~~] (5) for a second degree felony resulting
7 in the death of a human being, twelve thousand five hundred
8 dollars (\$12,500);

9 [~~(5)~~] (6) for a second degree felony for a
10 sexual offense against a child, twelve thousand five hundred
11 dollars (\$12,500);

12 [~~(6)~~] (7) for a second degree felony, ten
13 thousand dollars (\$10,000);

14 [~~(7)~~] (8) for a third degree felony resulting
15 in the death of a human being, five thousand dollars (\$5,000);

16 [~~(8)~~] (9) for a third degree felony for a
17 sexual offense against a child, five thousand dollars (\$5,000);
18 or

19 [~~(9)~~] (10) for a third or fourth degree
20 felony, five thousand dollars (\$5,000).

21 F. When the court imposes a sentence of
22 imprisonment for a felony offense, the court shall indicate
23 whether or not the offense is a serious violent offense, as
24 defined in Section 33-2-34 NMSA 1978. The court shall inform
25 an offender that the offender's sentence of imprisonment is

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1 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
2 and 33-2-38 NMSA 1978. If the court fails to inform an
3 offender that the offender's sentence is subject to those
4 provisions or if the court provides the offender with erroneous
5 information regarding those provisions, the failure to inform
6 or the error shall not provide a basis for a writ of habeas
7 corpus.

8 G. No later than October 31 of each year, the
9 New Mexico sentencing commission shall provide a written report
10 to the secretary of corrections, all New Mexico criminal court
11 judges, the administrative office of the district attorneys and
12 the chief public defender. The report shall specify the
13 average reduction in the sentence of imprisonment for serious
14 violent offenses and nonviolent offenses, as defined in Section
15 33-2-34 NMSA 1978, due to meritorious deductions earned by
16 prisoners during the previous fiscal year pursuant to the
17 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
18 NMSA 1978. The corrections department shall allow the
19 commission access to documents used by the department to
20 determine earned meritorious deductions for prisoners."

21 SECTION 6. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2015.