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HOUSE BILL 79

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

Daymon Ely and Antonio Maestas

AN ACT

RELATING TO CRIME; INCREASING THE STATUTE OF LIMITATIONS FOR
SECOND DEGREE MURDER; INCREASING THE PENALTIES FOR SECOND
DEGREE MURDER AND ATTEMPTED SECOND DEGREE MURDER; CLARIFYING
NONCAPITAL FELONY SENTENCING PROVISIONS.

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

SECTION 1. Section 30-1-8 NMSA 1978 (being Laws 1963,
Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--A
person shall not be prosecuted, tried or punished in any court
of this state unless the indictment is found or information or
complaint is filed within the time as provided:

A. for a second degree felony, within six years
from the time the crime was committed;

B. for a third or fourth degree felony, within five

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1 years from the time the crime was committed;

2 C. for a misdemeanor, within two years from the
3 time the crime was committed;

4 D. for a petty misdemeanor, within one year from
5 the time the crime was committed;

6 E. for any crime against or violation of Section
7 51-1-38 NMSA 1978, within three years from the time the crime
8 was committed;

9 F. for a felony pursuant to Section 7-1-71.3,
10 7-1-72 or 7-1-73 NMSA 1978, within five years from the time the
11 crime was committed; provided that for a series of crimes
12 involving multiple filing periods within one calendar year, the
13 limitation shall begin to run on December 31 of the year in
14 which the crimes occurred;

15 G. for an identity theft crime pursuant to Section
16 30-16-24.1 NMSA 1978, within five years from the time the crime
17 was discovered;

18 H. for any crime not contained in the Criminal Code
19 or where a limitation is not otherwise provided for, within
20 three years from the time the crime was committed; and

21 I. for a capital felony [~~or~~], a first degree
22 violent felony or second degree murder pursuant to Subsection B
23 of Section 30-2-1 NMSA 1978, no limitation period shall exist
24 and prosecution for these crimes may commence at any time after
25 the occurrence of the crime."

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1 SECTION 2. Section 30-28-1 NMSA 1978 (being Laws 1963,
2 Chapter 303, Section 28-1) is amended to read:

3 "30-28-1. ATTEMPT TO COMMIT A FELONY.--Attempt to commit
4 a felony consists of an overt act in furtherance of and with
5 intent to commit a felony and tending but failing to effect its
6 commission.

7 Whoever commits attempt to commit a felony, upon
8 conviction thereof, shall be punished as follows:

9 A. if the crime attempted is a capital or first
10 degree felony, the person committing such attempt is guilty of
11 a second degree felony;

12 B. if the crime attempted is a second degree
13 felony, the person committing such attempt is guilty of a third
14 degree felony;

15 C. if the crime attempted is murder in the second
16 degree, the person committing the attempted murder is guilty of
17 a third degree felony and, notwithstanding the provisions of
18 Section 31-18-15 NMSA 1978, the basic sentence of imprisonment
19 is nine years;

20 [~~C.~~] D. if the crime attempted is a third degree
21 felony, the person committing such attempt is guilty of a
22 fourth degree felony; and

23 [~~D.~~] E. if the crime attempted is a fourth degree
24 felony, the person committing such attempt is guilty of a
25 misdemeanor.

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1 No person shall be sentenced for an attempt to commit a
2 misdemeanor."

3 SECTION 3. Section 31-18-15 NMSA 1978 (being Laws 1977,
4 Chapter 216, Section 4, as amended) is amended to read:

5 "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--
6 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS
7 DEDUCTIONS.--

8 A. [~~If a person is convicted of~~] As used in a
9 statute that establishes a noncapital felony, the following
10 defined felony classifications and associated basic [sentence]
11 sentences of imprisonment [is] are as follows:

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

14 ~~(2) for a first degree felony for aggravated~~
15 ~~criminal sexual penetration, life imprisonment;~~

16 ~~(3) for a first degree felony, eighteen years~~
17 ~~imprisonment;~~

18 ~~(4) for a second degree felony resulting in~~
19 ~~the death of a human being, fifteen years imprisonment;~~

20 ~~(5) for a second degree felony for a sexual~~
21 ~~offense against a child, fifteen years imprisonment;~~

22 ~~(6) for a second degree felony for sexual~~
23 ~~exploitation of children, twelve years imprisonment;~~

24 ~~(7) for a second degree felony, nine years~~
25 ~~imprisonment;~~

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1 ~~(8) for a third degree felony resulting in the~~
2 ~~death of a human being, six years imprisonment;~~

3 ~~(9) for a third degree felony for a sexual~~
4 ~~offense against a child, six years imprisonment;~~

5 ~~(10) for a third degree felony for sexual~~
6 ~~exploitation of children, eleven years imprisonment;~~

7 ~~(11) for a third degree felony, three years~~
8 ~~imprisonment;~~

9 ~~(12) for a fourth degree felony for sexual~~
10 ~~exploitation of children, ten years imprisonment; or~~

11 ~~(13) for a fourth degree felony, eighteen~~
12 ~~months imprisonment.]~~

<u>FELONY CLASSIFICATION</u>	<u>BASIC SENTENCE</u>
<u>first degree felony resulting in</u>	
<u>the death of a child</u>	<u>life imprisonment</u>
<u>first degree felony for aggravated</u>	
<u>criminal sexual penetration</u>	<u>life imprisonment</u>
<u>first degree felony</u>	<u>eighteen years</u>
	<u>imprisonment</u>
<u>second degree felony resulting in</u>	
<u>the death of a human being</u>	<u>eighteen years</u>
	<u>imprisonment</u>
<u>second degree felony for a sexual</u>	
<u>offense against a child</u>	<u>fifteen years</u>
	<u>imprisonment</u>

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1	<u>second degree felony for sexual</u>	
2	<u>exploitation of children</u>	<u>twelve years imprisonment</u>
3	<u>second degree felony</u>	<u>nine years imprisonment</u>
4	<u>third degree felony resulting in</u>	
5	<u>the death of a human being</u>	<u>six years imprisonment</u>
6	<u>third degree felony for a sexual</u>	
7	<u>offense against a child</u>	<u>six years imprisonment</u>
8	<u>third degree felony for sexual</u>	
9	<u>exploitation of children</u>	<u>eleven years imprisonment</u>
10	<u>third degree felony</u>	<u>three years imprisonment</u>
11	<u>fourth degree felony for sexual</u>	
12	<u>exploitation of children</u>	<u>ten years imprisonment</u>
13	<u>fourth degree felony</u>	<u>eighteen months</u>
14		<u>imprisonment.</u>

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

20 C. A period of parole shall be imposed only for
21 felony convictions wherein a person is sentenced to
22 imprisonment of more than one year, unless the parties to a
23 proceeding agree that a period of parole should be imposed. If
24 a period of parole is imposed, the court shall include in the
25 judgment and sentence of each person convicted and sentenced to

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1 imprisonment in a corrections facility designated by the
2 corrections department authority for a period of parole to be
3 served in accordance with the provisions of Section 31-21-10
4 NMSA 1978 after the completion of any actual time of
5 imprisonment and authority to require, as a condition of
6 parole, the payment of the costs of parole services and
7 reimbursement to a law enforcement agency or local crime
8 stopper program in accordance with the provisions of that
9 section. If imposed, the period of parole shall be deemed to
10 be part of the sentence of the convicted person in addition to
11 the basic sentence imposed pursuant to Subsection A of this
12 section together with alterations, if any, pursuant to the
13 provisions of the Criminal Sentencing Act.

14 D. When a court imposes a sentence of imprisonment
15 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
16 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
17 imprisonment provided pursuant to the provisions of Subsection
18 A of this section, the period of parole shall be served in
19 accordance with the provisions of Section 31-21-10 NMSA 1978
20 for the degree of felony for the basic sentence for which the
21 inmate was convicted. For the purpose of designating a period
22 of parole, a court shall not consider that the basic sentence
23 of imprisonment was suspended or deferred and that the inmate
24 served a period of imprisonment pursuant to the provisions of
25 the Criminal Sentencing Act.

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

3 (1) for a first degree felony resulting in the
4 death of a child, seventeen thousand five hundred dollars
5 (\$17,500);

6 (2) for a first degree felony for aggravated
7 criminal sexual penetration, seventeen thousand five hundred
8 dollars (\$17,500);

9 (3) for a first degree felony, fifteen
10 thousand dollars (\$15,000);

11 (4) for a second degree felony resulting in
12 the death of a human being, twelve thousand five hundred
13 dollars (\$12,500);

14 (5) for a second degree felony for a sexual
15 offense against a child, twelve thousand five hundred dollars
16 (\$12,500);

17 (6) for a second degree felony for sexual
18 exploitation of children, five thousand dollars (\$5,000);

19 (7) for a second degree felony, ten thousand
20 dollars (\$10,000);

21 (8) for a third degree felony resulting in the
22 death of a human being, five thousand dollars (\$5,000);

23 (9) for a third degree felony for a sexual
24 offense against a child, five thousand dollars (\$5,000);

25 (10) for a third degree felony for sexual

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1 exploitation of children, five thousand dollars (\$5,000);

2 (11) for a third or fourth degree felony, five
3 thousand dollars (\$5,000); or

4 (12) for a fourth degree felony for sexual
5 exploitation of children, five thousand dollars (\$5,000).

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

18 G. No later than October 31 of each year, the
19 New Mexico sentencing commission shall provide a written report
20 to the secretary of corrections, all New Mexico criminal court
21 judges, the administrative office of the district attorneys and
22 the chief public defender. The report shall specify the
23 average reduction in the sentence of imprisonment for serious
24 violent offenses and nonviolent offenses, as defined in Section
25 33-2-34 NMSA 1978, due to meritorious deductions earned by

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1 prisoners during the previous fiscal year pursuant to the
2 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
3 NMSA 1978. The corrections department shall allow the
4 commission access to documents used by the department to
5 determine earned meritorious deductions for prisoners."

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