

1 HOUSE BILL 458

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO CRIME; PROVIDING THAT THE PENALTY FOR A FELON IN
12 POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS FIVE YEARS
13 IMPRISONMENT; PROVIDING THAT THE PENALTY FOR A FELON IN
14 POSSESSION OF A FIREARM DURING THE COMMISSION OF A CRIME IS
15 SEVEN YEARS IMPRISONMENT; PROHIBITING THE TRANSFERRING OF
16 POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE TO A FELON;
17 PROVIDING PENALTIES.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,
21 Chapter 225, Section 1, as amended) is amended to read:

22 "30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
23 TRANSPORTATION OR POSSESSION BY CERTAIN PERSONS--PENALTY.--

24 A. It is unlawful for the following persons to
25 receive, transport or possess a firearm or destructive device

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1 in this state:

2 (1) a felon;

3 (2) a person subject to an order of protection
4 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978; or

5 (3) a person convicted of any of the following
6 crimes:

7 (a) battery against a household member
8 pursuant to Section 30-3-15 NMSA 1978;

9 (b) criminal damage to property of a
10 household member pursuant to Section 30-3-18 NMSA 1978;

11 (c) a first offense of stalking pursuant
12 to Section 30-3A-3 NMSA 1978; or

13 (d) a crime listed in 18 U.S.C. 921.

14 B. A felon found in possession of a firearm [~~shall~~
15 ~~be~~] or destructive device is guilty of a third degree felony
16 and shall be sentenced in accordance with the provisions of the
17 Criminal Sentencing Act.

18 C. A [~~serious violent~~] felon [~~that is~~] found [~~to~~
19 ~~be~~] in possession of a firearm during the commission of a crime
20 shall be guilty of a third degree felony and [~~notwithstanding~~
21 ~~the provisions of Section 31-18-15 NMSA 1978~~] shall be
22 sentenced [~~to a basic term of six years imprisonment~~] in
23 accordance with the provisions of the Criminal Sentencing Act.

24 D. Any person subject to an order of protection
25 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted

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1 of a crime listed in Paragraph (3) of Subsection A of this
2 section who receives, transports or possesses a firearm or
3 destructive device is guilty of a misdemeanor.

4 E. A person who sells, loans, gives or otherwise
5 transfers possession of a firearm or destructive device to
6 another whom the person knows or should have known to be
7 prohibited from possession by this section is guilty of a
8 fourth degree felony.

9 ~~[E-]~~ F. As used in this section:

10 (1) except as provided in Paragraph (2) of
11 this subsection, "destructive device" means:

12 (a) any explosive, incendiary or poison
13 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
14 of more than four ounces; 4) missile having an explosive or
15 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
16 similar device;

17 (b) any type of weapon by whatever name
18 known that will, or that may be readily converted to, expel a
19 projectile by the action of an explosive or other propellant,
20 the barrel or barrels of which have a bore of more than one-
21 half inch in diameter, except a shotgun or shotgun shell that
22 is generally recognized as particularly suitable for sporting
23 purposes; or

24 (c) any combination of parts either
25 designed or intended for use in converting any device into a

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1 destructive device as defined in this paragraph and from which
2 a destructive device may be readily assembled;

3 (2) the term "destructive device" does not
4 include any device that is neither designed nor redesigned for
5 use as a weapon or any device, although originally designed for
6 use as a weapon, that is redesigned for use as a signaling,
7 pyrotechnic, line throwing, safety or similar device;

8 (3) "felon" means a person convicted of a
9 felony offense by a court of the United States or of any state
10 or political subdivision thereof and:

11 (a) less than ten years have passed
12 since the person completed serving a sentence or period of
13 probation for the felony conviction, whichever is later;

14 (b) the person has not been pardoned for
15 the felony conviction by the proper authority; and

16 (c) the person has not received a
17 deferred sentence; and

18 (4) "firearm" means any weapon that will or is
19 designed to or may readily be converted to expel a projectile
20 by the action of an explosion or the frame or receiver of any
21 such weapon [~~and~~

22 ~~(5) "serious violent felon" means a person~~
23 ~~convicted of an offense enumerated in Subparagraphs (a) through~~
24 ~~(n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA~~
25 ~~1978; provided that:~~

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1 ~~(a) less than ten years have passed~~
2 ~~since the person completed serving a sentence or a period of~~
3 ~~probation for the felony conviction, whichever is later;~~

4 ~~(b) the person has not been pardoned for~~
5 ~~the felony conviction by the proper authority; and~~

6 ~~(c) the person has not received a~~
7 ~~deferred sentence and completed the total term of deferment as~~
8 ~~provided in Section 31-20-9 NMSA 1978]."~~

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

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

14 A. As used in a statute that establishes a
15 noncapital felony, the following defined felony classifications
16 and associated basic sentences of imprisonment are as follows:

17	FELONY CLASSIFICATION	BASIC SENTENCE
18	first degree felony	
19	resulting in the death	
20	of a child	life imprisonment
21	first degree felony for	
22	aggravated criminal sexual	
23	penetration	life imprisonment
24	first degree felony	eighteen years imprisonment
25	second degree felony	

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1 resulting in the death of
2 a human being fifteen years imprisonment
3 second degree felony for a
4 sexual offense against a
5 child fifteen years imprisonment
6 second degree felony for
7 sexual exploitation of
8 children twelve years imprisonment
9 second degree felony nine years imprisonment
10 third degree felony resulting
11 in the death of a human being six years imprisonment
12 third degree felony for a
13 sexual offense against a
14 child six years imprisonment
15 third degree felony for sexual
16 exploitation of children eleven years imprisonment
17 third degree felony for
18 possession of a firearm or
19 destructive device by a felon
20 pursuant to Subsection B of
21 Section 30-7-16 NMSA 1978 five years imprisonment
22 third degree felony for
23 possession of a firearm by a
24 felon during the commission
25 of a crime pursuant to

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1 Subsection C of Section
2 30-7-16 NMSA 1978 seven years imprisonment
3 third degree felony three years imprisonment
4 fourth degree felony for
5 sexual exploitation of
6 children ten years imprisonment
7 fourth degree felony eighteen months imprisonment.

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

13 C. A period of parole shall be imposed only for
14 felony convictions wherein a person is sentenced to
15 imprisonment of more than one year, unless the parties to a
16 proceeding agree that a period of parole should be imposed. If
17 a period of parole is imposed, the court shall include in the
18 judgment and sentence of each person convicted and sentenced to
19 imprisonment in a corrections facility designated by the
20 corrections department authority for a period of parole to be
21 served in accordance with the provisions of Section 31-21-10
22 NMSA 1978 after the completion of any actual time of
23 imprisonment and authority to require, as a condition of
24 parole, the payment of the costs of parole services and
25 reimbursement to a law enforcement agency or local crime

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

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

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

21 (1) for a first degree felony resulting in the
22 death of a child, seventeen thousand five hundred dollars
23 (\$17,500);

24 (2) for a first degree felony for aggravated
25 criminal sexual penetration, seventeen thousand five hundred

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1 dollars (\$17,500);

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

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

7 (5) for a second degree felony for a sexual
8 offense against a child, twelve thousand five hundred dollars
9 (\$12,500);

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

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

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

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

18 (10) for a third degree felony for sexual
19 exploitation of children, five thousand dollars (\$5,000);

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

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

24 F. When the court imposes a sentence of
25 imprisonment for a felony offense, the court shall indicate

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

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

24 SECTION 3. EFFECTIVE DATE.--The effective date of the
25 provisions of this act is July 1, 2023.

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