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HOUSE BILL 46

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

William "Bill" R. Rehm and Harlan Vincent and Andrea Reeb

AN ACT

RELATING TO CRIMINAL LAW; PROVIDING THAT THE PENALTY FOR A
FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE IS FIVE
YEARS IMPRISONMENT; INCREASING THE PENALTY FOR A SERIOUS
VIOLENT FELON IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE
TO A SECOND DEGREE FELONY.

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

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

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

A. It is unlawful for the following persons to
receive, transport or possess a firearm or destructive device
in this state:

- (1) a felon;

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

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

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

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

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

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

12 B. A felon found in possession of a firearm or
13 destructive device shall be guilty of a third degree felony and
14 shall be sentenced in accordance with the provisions of the
15 Criminal Sentencing Act. A felon found in possession of a
16 firearm or destructive device for a second or subsequent
17 offense shall be guilty of a second degree felony.

18 C. A serious violent felon that is found to be in
19 possession of a firearm or destructive device shall be guilty
20 of a [third] second degree felony [~~and notwithstanding the~~
21 ~~provisions of Section 31-18-15 NMSA 1978, shall be sentenced to~~
22 ~~a basic term of six years imprisonment~~].

23 D. Any person subject to an order of protection
24 pursuant to Section 40-13-5 or 40-13A-5 NMSA 1978 or convicted
25 of a crime listed in Paragraph (3) of Subsection A of this

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1 section who receives, transports or possesses a firearm or
2 destructive device is guilty of a misdemeanor.

3 E. As used in this section:

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

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

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

18 (c) any combination of parts either
19 designed or intended for use in converting any device into a
20 destructive device as defined in this paragraph and from which
21 a destructive device may be readily assembled;

22 (2) the term "destructive device" does not
23 include any device that is neither designed nor redesigned for
24 use as a weapon or any device, although originally designed for
25 use as a weapon, that is redesigned for use as a signaling,

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1 pyrotechnic, line throwing, safety or similar device;

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

5 [~~(a)~~] ~~less than ten years have passed~~
6 ~~since the person completed serving a sentence or period of~~
7 ~~probation for the felony conviction, whichever is later;~~

8 ~~(b)]~~ (a) the person has not been
9 pardoned for the felony conviction by the proper authority; and

10 [~~(c)]~~ (b) the person has not received a
11 deferred sentence;

12 (4) "firearm" means any weapon that will or is
13 designed to or may readily be converted to expel a projectile
14 by the action of an explosion or the frame or receiver of any
15 such weapon; and

16 (5) "serious violent felon" means a person
17 convicted of an offense enumerated in Subparagraphs (a) through
18 (n) of Paragraph (4) of Subsection L of Section 33-2-34 NMSA
19 1978; provided that:

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

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

25 (c) the person has not received a

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1 deferred sentence and completed the total term of deferment as
2 provided in Section 31-20-9 NMSA 1978."

3 SECTION 2. 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. As used in a statute that establishes a
9 noncapital felony, the following defined felony classifications
10 and associated basic sentences of imprisonment are as follows:

| 11 FELONY CLASSIFICATION | BASIC SENTENCE |
|-------------------------------|-----------------------------|
| 12 first degree felony | |
| 13 resulting in the death | |
| 14 of a child | life imprisonment |
| 15 first degree felony for | |
| 16 aggravated criminal sexual | |
| 17 penetration | life imprisonment |
| 18 first degree felony | eighteen years imprisonment |
| 19 second degree felony | |
| 20 resulting in the death of | |
| 21 a human being | fifteen years imprisonment |
| 22 second degree felony for a | |
| 23 sexual offense against a | |
| 24 child | fifteen years imprisonment |
| 25 second degree felony for | |

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

21 B. The appropriate basic sentence of imprisonment
22 shall be imposed upon a person convicted and sentenced pursuant
23 to Subsection A of this section, unless the court alters the
24 sentence pursuant to the provisions of the Criminal Sentencing
25 Act.

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1 C. A period of parole shall be imposed only for
2 felony convictions wherein a person is sentenced to
3 imprisonment of more than one year, unless the parties to a
4 proceeding agree that a period of parole should be imposed. If
5 a period of parole is imposed, the court shall include in the
6 judgment and sentence of each person convicted and sentenced to
7 imprisonment in a corrections facility designated by the
8 corrections department authority for a period of parole to be
9 served in accordance with the provisions of Section 31-21-10
10 NMSA 1978 after the completion of any actual time of
11 imprisonment and authority to require, as a condition of
12 parole, the payment of the costs of parole services and
13 reimbursement to a law enforcement agency or local crime
14 stopper program in accordance with the provisions of that
15 section. If imposed, the period of parole shall be deemed to
16 be part of the sentence of the convicted person in addition to
17 the basic sentence imposed pursuant to Subsection A of this
18 section together with alterations, if any, pursuant to the
19 provisions of the Criminal Sentencing Act.

20 D. When a court imposes a sentence of imprisonment
21 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
22 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
23 imprisonment provided pursuant to the provisions of Subsection
24 A of this section, the period of parole shall be served in
25 accordance with the provisions of Section 31-21-10 NMSA 1978

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1 for the degree of felony for the basic sentence for which the
2 inmate was convicted. For the purpose of designating a period
3 of parole, a court shall not consider that the basic sentence
4 of imprisonment was suspended or deferred and that the inmate
5 served a period of imprisonment pursuant to the provisions of
6 the Criminal Sentencing Act.

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

9 (1) for a first degree felony resulting in the
10 death of a child, seventeen thousand five hundred dollars
11 (\$17,500);

12 (2) for a first degree felony for aggravated
13 criminal sexual penetration, seventeen thousand five hundred
14 dollars (\$17,500);

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

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

20 (5) for a second degree felony for a sexual
21 offense against a child, twelve thousand five hundred dollars
22 (\$12,500);

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

25 (7) for a second degree felony, ten thousand

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1 dollars (\$10,000);

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

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

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

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

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

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

24 G. No later than October 31 of each year, the
25 New Mexico sentencing commission shall provide a written report

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1 to the secretary of corrections, all New Mexico criminal court
2 judges, the administrative office of the district attorneys and
3 the chief public defender. The report shall specify the
4 average reduction in the sentence of imprisonment for serious
5 violent offenses and nonviolent offenses, as defined in Section
6 33-2-34 NMSA 1978, due to meritorious deductions earned by
7 prisoners during the previous fiscal year pursuant to the
8 provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38
9 NMSA 1978. The corrections department shall allow the
10 commission access to documents used by the department to
11 determine earned meritorious deductions for prisoners."

12 SECTION 3. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2024.