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HOUSE BILL 109

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

INTRODUCED BY

Stefani Lord and Harlan Vincent

AN ACT

RELATING TO CRIME; PROVIDING THAT AGGRAVATED CRIMINAL SEXUAL PENETRATION AND CRIMINAL SEXUAL PENETRATION OF A CHILD SHALL BE PUNISHED BY DEATH; PROVIDING EXCEPTIONS; CREATING A FIRST DEGREE FELONY FOR HUMAN SEXUAL TRAFFICKING AGAINST A VICTIM UNDER EIGHTEEN YEARS OF AGE PUNISHABLE BY DEATH; ESTABLISHING A FINE FOR FIRST DEGREE FELONY CRIMINAL SEXUAL PENETRATION OF A CHILD.

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

SECTION 1. Section 30-9-11 NMSA 1978 (being Laws 1975, Chapter 109, Section 2, as amended) is amended to read:

"30-9-11. CRIMINAL SEXUAL PENETRATION.--

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual

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1 intercourse, cunnilingus, fellatio or anal intercourse or the
2 causing of penetration, to any extent and with any object, of
3 the genital or anal openings of another, whether or not there
4 is any emission.

5 B. Criminal sexual penetration does not include
6 medically indicated procedures.

7 C. Aggravated criminal sexual penetration consists
8 of all criminal sexual penetration perpetrated on a child under
9 thirteen years of age with an intent to kill or with a depraved
10 mind regardless of human life. Whoever commits aggravated
11 criminal sexual penetration is guilty of a first degree felony
12 for aggravated criminal sexual penetration.

13 D. Criminal sexual penetration in the first degree
14 consists of all criminal sexual penetration perpetrated

15 [~~(1) on a child under thirteen years of age;~~
16 or

17 ~~(2)] by the use of force or coercion that
18 results in great bodily harm or great mental anguish to the
19 victim.~~

20 Whoever commits criminal sexual penetration in the first
21 degree is guilty of a first degree felony.

22 E. Criminal sexual penetration of a child in the
23 first degree consists of all criminal sexual penetration
24 perpetrated on a child under eighteen years of age.

25 Whoever commits criminal sexual penetration of a child in

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1 the first degree is guilty of a first degree felony for
2 criminal sexual penetration of a child; provided that whoever
3 commits criminal sexual penetration of a child when the child
4 is thirteen to sixteen years of age and the perpetrator is at
5 least eighteen years of age and is at least four years older
6 than the child and not the spouse of that child is guilty of a
7 fourth degree felony; and provided further that whoever commits
8 criminal sexual penetration of a child when the perpetrator is
9 a licensed school employee, an unlicensed school employee, a
10 school contract employee, a school health service provider or a
11 school volunteer, and is at least eighteen years of age and is
12 at least four years older than the child and not the spouse of
13 that child, is guilty of a first degree felony for criminal
14 sexual penetration of a child.

15 [E.] F. Criminal sexual penetration in the second
16 degree consists of all criminal sexual penetration perpetrated:

17 ~~[(1) by the use of force or coercion on a~~
18 ~~child thirteen to eighteen years of age;~~

19 (2)] (1) on an inmate confined in a
20 correctional facility or jail when the perpetrator is in a
21 position of authority over the inmate;

22 [(3)] (2) by the use of force or coercion that
23 results in personal injury to the victim;

24 [(4)] (3) by the use of force or coercion when
25 the perpetrator is aided or abetted by one or more persons;

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1 [~~(5)~~] (4) in the commission of any other
2 felony; or

3 [~~(6)~~] (5) when the perpetrator is armed with a
4 deadly weapon.

5 Whoever commits criminal sexual penetration in the second
6 degree is guilty of a second degree felony. [~~Whoever commits~~
7 ~~criminal sexual penetration in the second degree when the~~
8 ~~victim is a child who is thirteen to eighteen years of age is~~
9 ~~guilty of a second degree felony for a sexual offense against a~~
10 ~~child and, notwithstanding the provisions of Section 31-18-15~~
11 ~~NMSA 1978, shall be sentenced to a minimum term of imprisonment~~
12 ~~of three years, which shall not be suspended or deferred. The~~
13 ~~imposition of a minimum, mandatory term of imprisonment~~
14 ~~pursuant to the provisions of this subsection shall not be~~
15 ~~interpreted to preclude the imposition of sentencing~~
16 ~~enhancements pursuant to the provisions of the Criminal~~
17 ~~Sentencing Act.~~

18 F.] G. Criminal sexual penetration in the third
19 degree consists of all criminal sexual penetration perpetrated
20 through the use of force or coercion not otherwise specified in
21 this section.

22 Whoever commits criminal sexual penetration in the third
23 degree is guilty of a third degree felony.

24 [~~G. Criminal sexual penetration in the fourth~~
25 ~~degree consists of all criminal sexual penetration:~~

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1 ~~(1) not defined in Subsections D through F of~~
2 ~~this section perpetrated on a child thirteen to sixteen years~~
3 ~~of age when the perpetrator is at least eighteen years of age~~
4 ~~and is at least four years older than the child and not the~~
5 ~~spouse of that child; or~~

6 ~~(2) perpetrated on a child thirteen to~~
7 ~~eighteen years of age when the perpetrator, who is a licensed~~
8 ~~school employee, an unlicensed school employee, a school~~
9 ~~contract employee, a school health service provider or a school~~
10 ~~volunteer, and who is at least eighteen years of age and is at~~
11 ~~least four years older than the child and not the spouse of~~
12 ~~that child, learns while performing services in or for a school~~
13 ~~that the child is a student in a school.~~

14 ~~Whoever commits criminal sexual penetration in the fourth~~
15 ~~degree is guilty of a fourth degree felony.]"~~

16 SECTION 2. Section 30-52-1 NMSA 1978 (being Laws 2008,
17 Chapter 17, Section 1) is amended to read:

18 "30-52-1. HUMAN TRAFFICKING.--

19 A. Human trafficking consists of a person
20 knowingly:

21 (1) recruiting, soliciting, enticing,
22 transporting or obtaining by any means another person with the
23 intent or knowledge that force, fraud or coercion will be used
24 to subject the person to labor, services or commercial sexual
25 activity;

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1 (2) recruiting, soliciting, enticing,
2 transporting or obtaining by any means a person under the age
3 of eighteen years with the intent or knowledge that the person
4 will be caused to engage in commercial sexual activity; or

5 (3) benefiting, financially or by receiving
6 anything of value, from the labor, services or commercial
7 sexual activity of another person with the knowledge that
8 force, fraud or coercion was used to obtain the labor, services
9 or commercial sexual activity.

10 B. The attorney general and the district attorney
11 in the county of jurisdiction have concurrent jurisdiction to
12 enforce the provisions of this section.

13 C. Except as provided in Subsection D of this
14 section, whoever commits human trafficking is guilty of a third
15 degree felony; except if the victim is under the age of:

16 (1) sixteen, the person is guilty of a second
17 degree felony; or

18 (2) thirteen, the person is guilty of a first
19 degree felony.

20 D. Whoever commits human trafficking if the conduct
21 is commercial sexual activity and the victim is under the age
22 of eighteen is guilty of a first degree felony for human sexual
23 trafficking against a victim under the age of eighteen.

24 [~~D.~~] E. Prosecution pursuant to this section shall
25 not prevent prosecution pursuant to any other provision of the

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1 law when the conduct also constitutes a violation of that other
2 provision.

3 ~~[E.]~~ F. In a prosecution pursuant to this section,
4 a human trafficking victim shall not be charged with accessory
5 to the crime of human trafficking.

6 ~~[F.]~~ G. A person convicted of human trafficking
7 shall, in addition to any other punishment, be ordered to make
8 restitution to the victim for the gross income or value of the
9 victim's labor or services and any other actual damages in
10 accordance with Section 31-17-1 NMSA 1978.

11 ~~[G.]~~ H. As used in this section:

12 (1) "coercion" means:

13 (a) causing or threatening to cause harm
14 to any person;

15 (b) using or threatening to use physical
16 force against any person;

17 (c) abusing or threatening to abuse the
18 law or legal process;

19 (d) threatening to report the
20 immigration status of any person to governmental authorities;
21 or

22 (e) knowingly destroying, concealing,
23 removing, confiscating or retaining any actual or purported
24 government document of any person; and

25 (2) "commercial sexual activity" means any

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1 sexual act or sexually explicit exhibition for which anything
2 of value is given, promised to or received by any person."

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--CAPITAL FELONIES--
6 NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE
7 AUTHORITY--MERITORIOUS 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] <u>death</u>
18 first degree felony	eighteen years imprisonment
19 <u>first degree felony for</u>	
20 <u>criminal sexual penetration</u>	
21 <u>of a child</u>	<u>death</u>
22 <u>first degree felony for</u>	
23 <u>human sexual trafficking</u>	
24 <u>against a victim under</u>	
25 <u>eighteen years of age</u>	<u>death</u>

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1 second degree felony
2 resulting in the death of
3 a human being fifteen years imprisonment
4 second degree felony for a
5 sexual offense against a
6 child fifteen years imprisonment
7 second degree felony for
8 sexual exploitation of
9 children twelve years imprisonment
10 second degree felony nine years imprisonment
11 third degree felony resulting
12 in the death of a human being six years imprisonment
13 third degree felony for a
14 sexual offense against a
15 child six years imprisonment
16 third degree felony for sexual
17 exploitation of children eleven years imprisonment
18 third degree felony three years imprisonment
19 fourth degree felony for
20 sexual exploitation of
21 children ten years imprisonment
22 fourth degree felony eighteen months imprisonment.

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

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1 sentence pursuant to the provisions of the Criminal Sentencing
2 Act.

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

22 D. When a court imposes a sentence of imprisonment
23 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or
24 31-18-17 NMSA 1978 and suspends or defers the basic sentence of
25 imprisonment provided pursuant to the provisions of Subsection

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1 A of this section, the period of parole shall be served in
2 accordance with the provisions of Section 31-21-10 NMSA 1978
3 for the degree of felony for the basic sentence for which the
4 inmate was convicted. For the purpose of designating a period
5 of parole, a court shall not consider that the basic sentence
6 of imprisonment was suspended or deferred and that the inmate
7 served a period of imprisonment pursuant to the provisions of
8 the Criminal Sentencing Act.

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

11 (1) for a first degree felony resulting in the
12 death of a child, seventeen thousand five hundred dollars
13 (\$17,500);

14 (2) for a first degree felony for aggravated
15 criminal sexual penetration, [~~seventeen thousand five hundred~~
16 ~~dollars (\$17,500)~~] one hundred thousand dollars (\$100,000);

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

19 (4) for a first degree felony for criminal
20 sexual penetration of a child, one hundred thousand dollars
21 (\$100,000);

22 [~~(4)~~] (5) for a second degree felony resulting
23 in the death of a human being, twelve thousand five hundred
24 dollars (\$12,500);

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

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1 sexual offense against a child, twelve thousand five hundred
2 dollars (\$12,500);

3 ~~[(6)]~~ (7) for a second degree felony for
4 sexual exploitation of children, five thousand dollars
5 (\$5,000);

6 ~~[(7)]~~ (8) for a second degree felony, ten
7 thousand dollars (\$10,000);

8 ~~[(8)]~~ (9) for a third degree felony resulting
9 in the death of a human being, five thousand dollars (\$5,000);

10 ~~[(9)]~~ (10) for a third degree felony for a
11 sexual offense against a child, five thousand dollars (\$5,000);

12 ~~[(10)]~~ (11) for a third degree felony for
13 sexual exploitation of children, five thousand dollars
14 (\$5,000);

15 ~~[(11)]~~ (12) for a third or fourth degree
16 felony, five thousand dollars (\$5,000); or

17 ~~[(12)]~~ (13) for a fourth degree felony for
18 sexual exploitation of children, five thousand dollars
19 (\$5,000).

20 F. When the court imposes a sentence of
21 imprisonment for a felony offense, the court shall indicate
22 whether or not the offense is a serious violent offense as
23 defined in Section 33-2-34 NMSA 1978. The court shall inform
24 an offender that the offender's sentence of imprisonment is
25 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37

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

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