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HOUSE BILL 112

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Antonio Maestas

AN ACT

RELATING TO CRIME; INCREASING THE PENALTIES FOR SECOND DEGREE  
MURDER AND ATTEMPTED SECOND DEGREE MURDER.

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

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

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

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

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

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1           B. if the crime attempted is a second degree  
2 felony, the person committing such attempt is guilty of a third  
3 degree felony;

4           C. if the crime attempted is murder in the second  
5 degree, the person committing the attempted murder is guilty of  
6 a third degree felony and, notwithstanding the provisions of  
7 Section 31-18-15 NMSA 1978, shall be sentenced to a minimum  
8 term of imprisonment of nine years;

9           ~~[G-]~~ D. if the crime attempted is a third degree  
10 felony, the person committing such attempt is guilty of a  
11 fourth degree felony; and

12           ~~[D-]~~ E. if the crime attempted is a fourth degree  
13 felony, the person committing such attempt is guilty of a  
14 misdemeanor.

15           No person shall be sentenced for an attempt to commit a  
16 misdemeanor."

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

19           "31-18-15. SENTENCING AUTHORITY--NONCAPITAL FELONIES--  
20 BASIC SENTENCES AND FINES--PAROLE AUTHORITY--MERITORIOUS  
21 DEDUCTIONS.--

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

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

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

3 (3) for a first degree felony, eighteen years  
4 imprisonment;

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

8 (5) for a second degree felony for a sexual  
9 offense against a child, fifteen years imprisonment;

10 (6) for a second degree felony for sexual  
11 exploitation of children, twelve years imprisonment;

12 (7) for a second degree felony, nine years  
13 imprisonment;

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

16 (9) for a third degree felony for a sexual  
17 offense against a child, six years imprisonment;

18 (10) for a third degree felony for sexual  
19 exploitation of children, eleven years imprisonment;

20 (11) for a third degree felony, three years  
21 imprisonment;

22 (12) for a fourth degree felony for sexual  
23 exploitation of children, ten years imprisonment; or

24 (13) for a fourth degree felony, eighteen  
25 months imprisonment.

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1           B. The appropriate basic sentence of imprisonment  
2 shall be imposed upon a person convicted and sentenced pursuant  
3 to Subsection A of this section, unless the court alters the  
4 sentence pursuant to the provisions of the Criminal Sentencing  
5 Act.

6           C. The court shall include in the judgment and  
7 sentence of each person convicted and sentenced to imprisonment  
8 in a corrections facility designated by the corrections  
9 department authority for a period of parole to be served in  
10 accordance with the provisions of Section 31-21-10 NMSA 1978  
11 after the completion of any actual time of imprisonment and  
12 authority to require, as a condition of parole, the payment of  
13 the costs of parole services and reimbursement to a law  
14 enforcement agency or local crime stopper program in accordance  
15 with the provisions of that section. The period of parole  
16 shall be deemed to be part of the sentence of the convicted  
17 person in addition to the basic sentence imposed pursuant to  
18 Subsection A of this section together with alterations, if any,  
19 pursuant to the 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, 2018.

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