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HOUSE BILL 79

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

INTRODUCED BY

Daymon Ely and Antonio Maestas and William "Bill" R. Rehm and  
Katy M. Duhigg and Marian Matthews

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;

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1           B. for a third or fourth degree felony, within five  
2 years from the time the crime was committed;

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

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

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

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

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

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

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

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1 the occurrence of the crime."

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

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

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

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

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

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

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

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

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1 misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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- 1 ~~imprisonment;~~  
2 ~~(8) for a third degree felony resulting in the~~  
3 ~~death of a human being, six years imprisonment;~~  
4 ~~(9) for a third degree felony for a sexual~~  
5 ~~offense against a child, six years imprisonment;~~  
6 ~~(10) for a third degree felony for sexual~~  
7 ~~exploitation of children, eleven years imprisonment;~~  
8 ~~(11) for a third degree felony, three years~~  
9 ~~imprisonment;~~  
10 ~~(12) for a fourth degree felony for sexual~~  
11 ~~exploitation of children, ten years imprisonment; or~~  
12 ~~(13) for a fourth degree felony, eighteen~~  
13 ~~months imprisonment.]~~

14 FELONY CLASSIFICATION

BASIC SENTENCE

15 first degree felony resulting in

16 the death of a child

life imprisonment

17 first degree felony for aggravated

18 criminal sexual penetration

life imprisonment

19 first degree felony

eighteen years

20 imprisonment

21 second degree felony resulting in

22 the death of a human being

eighteen years

23 imprisonment

24 second degree felony for a sexual

25 offense against a child

fifteen years

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

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

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

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

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

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1 the Criminal Sentencing Act.

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

4 (1) for a first degree felony resulting in the  
5 death of a child, seventeen thousand five hundred dollars  
6 (\$17,500);

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

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

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

15 (5) for a second degree felony for a sexual  
16 offense against a child, twelve thousand five hundred dollars  
17 (\$12,500);

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

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

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

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

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

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

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

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

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

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

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