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HOUSE BILL 46

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

INTRODUCED BY

William "Bill" R. Rehm

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.

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