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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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 intercourse, cunnilingus, fellatio or anal intercourse or the

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

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

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

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

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

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

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

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

24 Whoever commits criminal sexual penetration of a child in
25 the first degree is guilty of a first degree felony for

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

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

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

18 ~~(2)]~~ (1) on an inmate confined in a
19 correctional facility or jail when the perpetrator is in a
20 position of authority over the inmate;

21 [~~(3)~~] (2) by the use of force or coercion that
22 results in personal injury to the victim;

23 [~~(4)~~] (3) by the use of force or coercion when
24 the perpetrator is aided or abetted by one or more persons;

25 [~~(5)~~] (4) in the commission of any other

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1 felony; or

2 ~~[(6)]~~ (5) when the perpetrator is armed with a
3 deadly weapon.

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

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

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

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

25 ~~(1) not defined in Subsections D through F of~~

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1 ~~this section perpetrated on a child thirteen to sixteen years~~
2 ~~of age when the perpetrator is at least eighteen years of age~~
3 ~~and is at least four years older than the child and not the~~
4 ~~spouse of that child; or~~

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

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

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

17 "30-52-1. HUMAN TRAFFICKING.--

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

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

25 (2) recruiting, soliciting, enticing,

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

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

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

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

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

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

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

23 [~~D.~~] E. Prosecution pursuant to this section shall
24 not prevent prosecution pursuant to any other provision of the
25 law when the conduct also constitutes a violation of that other

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1 provision.

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

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

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

- 11 (1) "coercion" means:
- 12 (a) causing or threatening to cause harm
 - 13 to any person;
 - 14 (b) using or threatening to use physical
 - 15 force against any person;
 - 16 (c) abusing or threatening to abuse the
 - 17 law or legal process;
 - 18 (d) threatening to report the
 - 19 immigration status of any person to governmental authorities;
 - 20 or
 - 21 (e) knowingly destroying, concealing,
 - 22 removing, confiscating or retaining any actual or purported
 - 23 government document of any person; and

24 (2) "commercial sexual activity" means any
25 sexual act or sexually explicit exhibition for which anything

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1 of value is given, promised to or received by any person."

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

4 "31-18-15. SENTENCING AUTHORITY--CAPITAL FELONIES--
5 NONCAPITAL FELONIES--BASIC SENTENCES AND FINES--PAROLE
6 AUTHORITY--MERITORIOUS DEDUCTIONS.--

7 A. As used in a statute that establishes a
8 noncapital felony, the following defined felony classifications
9 and associated basic sentences of imprisonment are as follows:

10 FELONY CLASSIFICATION	BASIC SENTENCE
11 first degree felony	
12 resulting in the death	
13 of a child	life imprisonment
14 first degree felony for	
15 aggravated criminal sexual	
16 penetration	[life imprisonment] <u>death</u>
17 first degree felony	eighteen years imprisonment
18 <u>first degree felony for</u>	
19 <u>criminal sexual penetration</u>	
20 <u>of a child</u>	<u>death</u>
21 <u>first degree felony for</u>	
22 <u>human sexual trafficking</u>	
23 <u>against a victim under</u>	
24 <u>eighteen years of age</u>	<u>death</u>
25 second degree felony	

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

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

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1 Act.

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

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

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

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

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

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

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

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

21 [~~(4)~~] (5) for a second degree felony resulting
22 in the death of a human being, twelve thousand five hundred
23 dollars (\$12,500);

24 [~~(5)~~] (6) for a second degree felony for a
25 sexual offense against a child, twelve thousand five hundred

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1 dollars (\$12,500);

2 [~~(6)~~] (7) for a second degree felony for
3 sexual exploitation of children, five thousand dollars
4 (\$5,000);

5 [~~(7)~~] (8) for a second degree felony, ten
6 thousand dollars (\$10,000);

7 [~~(8)~~] (9) for a third degree felony resulting
8 in the death of a human being, five thousand dollars (\$5,000);

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

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

14 [~~(11)~~] (12) for a third or fourth degree
15 felony, five thousand dollars (\$5,000); or

16 [~~(12)~~] (13) for a fourth degree felony for
17 sexual exploitation of children, five thousand dollars
18 (\$5,000).

19 F. When the court imposes a sentence of
20 imprisonment for a felony offense, the court shall indicate
21 whether or not the offense is a serious violent offense as
22 defined in Section 33-2-34 NMSA 1978. The court shall inform
23 an offender that the offender's sentence of imprisonment is
24 subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37
25 and 33-2-38 NMSA 1978. If the court fails to inform an

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1 offender that the offender's sentence is subject to those
2 provisions or if the court provides the offender with erroneous
3 information regarding those provisions, the failure to inform
4 or the error shall not provide a basis for a writ of habeas
5 corpus.

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

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