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SENATE BILL 276

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

INTRODUCED BY

Antonio Maestas and Bill B. O'Neill

AN ACT

RELATING TO SENTENCING; PROVIDING THAT PROBATION SHALL BE SERVED INSTEAD OF PAROLE IN CERTAIN CIRCUMSTANCES; PROVIDING THAT THE COURT SHALL NOT ORDER A DEFENDANT TO BE PLACED ON PROBATION FOR A LONGER PERIOD THAN THE MAXIMUM ALLOWABLE INCARCERATION TIME.

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

SECTION 1. Section 31-18-15 NMSA 1978 (being Laws 1977, Chapter 216, Section 4, as amended) is amended to read:

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

A. As used in a statute that establishes a noncapital felony, the following defined felony classifications .227503.3

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1 and associated basic sentences of imprisonment are as follows:

2	FELONY CLASSIFICATION	BASIC SENTENCE
3	first degree felony	
4	resulting in the death	
5	of a child	life imprisonment
6	first degree felony for	
7	aggravated criminal sexual	
8	penetration	life imprisonment
9	first degree felony	eighteen years imprisonment
10	second degree felony	
11	resulting in the death of	
12	a human being	fifteen years imprisonment
13	second degree felony for a	
14	sexual offense against a	
15	child	fifteen years imprisonment
16	second degree felony for	
17	sexual exploitation of	
18	children	twelve years imprisonment
19	second degree felony	nine years imprisonment
20	third degree felony resulting	
21	in the death of a human being	six years imprisonment
22	third degree felony for a	
23	sexual offense against a	
24	child	six years imprisonment
25	third degree felony for sexual	

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1 exploitation of children eleven years imprisonment  
2 third degree felony three years imprisonment  
3 fourth degree felony for  
4 sexual exploitation of  
5 children ten years imprisonment  
6 fourth degree felony eighteen months imprisonment.

7 B. The appropriate basic sentence of imprisonment  
8 shall be imposed upon a person convicted and sentenced pursuant  
9 to Subsection A of this section, unless the court alters the  
10 sentence pursuant to the provisions of the Criminal Sentencing  
11 Act.

12 C. A period of parole shall be imposed only for  
13 felony convictions wherein a person is sentenced to  
14 imprisonment of more than one year, unless the parties to a  
15 proceeding agree that a period of parole should be imposed. If  
16 a period of parole is imposed, the court shall include in the  
17 judgment and sentence of each person convicted and sentenced to  
18 imprisonment in a corrections facility designated by the  
19 corrections department authority for a period of parole to be  
20 served in accordance with the provisions of Section 31-21-10  
21 NMSA 1978 after the completion of any actual time of  
22 imprisonment and authority to require, as a condition of  
23 parole, the payment of the costs of parole services and  
24 reimbursement to a law enforcement agency or local crime  
25 stopper program in accordance with the provisions of that

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1 section. If imposed, the period of parole shall be deemed to  
2 be part of the sentence of the convicted person in addition to  
3 the basic sentence imposed pursuant to Subsection A of this  
4 section together with alterations, if any, pursuant to the  
5 provisions of the Criminal Sentencing Act.

6 D. When a court imposes a sentence of imprisonment  
7 pursuant to the provisions of Section 31-18-15.1, 31-18-16 or  
8 31-18-17 NMSA 1978 and suspends or defers the basic sentence of  
9 imprisonment provided pursuant to the provisions of Subsection  
10 A of this section, the period of parole shall be served in  
11 accordance with the provisions of Section 31-21-10 NMSA 1978  
12 for the degree of felony for the basic sentence for which the  
13 inmate was convicted. For the purpose of designating a period  
14 of parole, a court shall not consider that the basic sentence  
15 of imprisonment was suspended or deferred and that the inmate  
16 served a period of imprisonment pursuant to the provisions of  
17 the Criminal Sentencing Act. Parole shall not be required if a  
18 partially suspended sentence involving probation would be  
19 concurrent.

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

22 (1) for a first degree felony resulting in the  
23 death of a child, seventeen thousand five hundred dollars  
24 (\$17,500);

25 (2) for a first degree felony for aggravated

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1 criminal sexual penetration, seventeen thousand five hundred  
2 dollars (\$17,500);

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

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

8 (5) for a second degree felony for a sexual  
9 offense against a child, twelve thousand five hundred dollars  
10 (\$12,500);

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

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

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

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

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

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

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

25 F. When the court imposes a sentence of

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

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

25 SECTION 2. Section 31-20-5 NMSA 1978 (being Laws 1963,

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1 Chapter 303, Section 29-17, as amended) is amended to read:

2 "31-20-5. PLACING DEFENDANT ON PROBATION.--

3 A. When a person has been convicted of a crime for  
4 which a sentence of imprisonment is authorized and when the  
5 magistrate, metropolitan or district court has deferred or  
6 suspended sentence, it shall order the defendant to be placed  
7 on probation for all or some portion of the period of deferment  
8 or suspension if the defendant is in need of supervision,  
9 guidance or direction that is feasible for the corrections  
10 department to furnish. Except for sex offenders as provided in  
11 Section 31-20-5.2 NMSA 1978, the total period of probation for  
12 district, [~~court shall not exceed five years and the total~~  
13 ~~period of probation for the~~] magistrate or metropolitan courts  
14 shall be no longer than the maximum allowable incarceration  
15 time for the offense or as otherwise provided by law. The time  
16 period for probation shall not exceed the jurisdiction of the  
17 court.

18 B. If a defendant is required to serve a period of  
19 probation subsequent to a period of incarceration, [~~(1)~~] the  
20 period of probation shall be served [~~subsequent to~~] instead of  
21 any required period of parole. [~~with the time served on parole~~  
22 ~~credited as time served on the period of probation and the~~  
23 ~~conditions of probation imposed by the court deemed as~~  
24 ~~additional conditions of parole; and~~

25 ~~(2) in the event that the defendant violates~~

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1 ~~any condition of that parole, the parole board shall cause him~~  
2 ~~to be brought before it pursuant to the provisions of Section~~  
3 ~~31-21-14 NMSA 1978 and may make any disposition authorized~~  
4 ~~pursuant to that section and, if parole is revoked, the period~~  
5 ~~of parole served in the custody of a correctional facility~~  
6 ~~shall not be credited as time served on probation]"~~

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