



The Legislature
of the
State of New Mexico

50th Legislature, 2nd Session

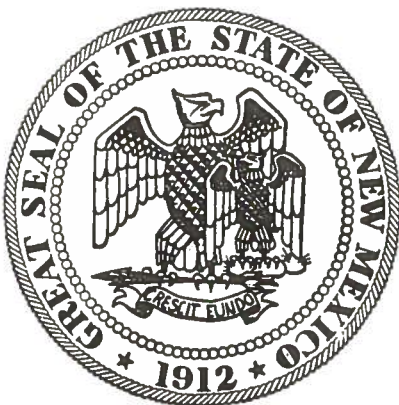
LAWS 2012

CHAPTER _____

HOUSE MEMORIAL 70

Introduced by

REPRESENTATIVE ANTONIO "MOE" MAESTAS AND REPRESENTATIVE BRIAN F. EGOLF



1 A MEMORIAL
2 REQUESTING AN EXAMINATION OF DIFFERENT INTERPRETATIONS OF
3 BASIC SENTENCES AND FINES IMPOSED FOR NONCAPITAL FELONY
4 OFFENSES.

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6 WHEREAS, Section 31-18-15 NMSA 1978 of the Criminal
7 Sentencing Act sets forth the punishment for noncapital
8 felonies by providing for the basic sentence of imprisonment
9 and the fine for each type of felony; and

10 WHEREAS, degrees of felonies began as first degree,
11 second degree, third degree and fourth degree but have
12 recently evolved to include, for example, first degree felony
13 resulting in the death of a child, second degree felony for a
14 sexual offense against a child and third degree felony
15 resulting in the death of a human being; and

16 WHEREAS, like the original felony degrees, these
17 additional descriptive degrees of felonies provide for
18 different levels of imprisonment and fines; and

19 WHEREAS, the punishment for a crime in the Criminal Code
20 is set forth in the statute describing the elements of the
21 crime as either a simple degree of felony or a more
22 descriptive degree of felony; and

23 WHEREAS, the courts have interpreted the more
24 descriptive degree of felony as a combination of the simple
25 degree of felony plus a finding of fact; for example, the

1 crime of homicide by vehicle is described in statute as a
2 third degree felony, but the courts have reasoned that because
3 homicide by vehicle results in the death of a human being, the
4 punishment for the crime should be the punishment prescribed
5 for a third degree felony resulting in the death of a human
6 being; and

7 WHEREAS, interpretation of criminal sentencing by the
8 courts has rendered the punishment for the crime of homicide
9 by vehicle equivalent to that for the crime of voluntary
10 manslaughter, despite the fact that the crime of homicide by
11 vehicle is stated to be a third degree felony and the crime of
12 voluntary manslaughter to be a third degree felony resulting
13 in the death of a human being, and there are other examples of
14 this; and

15 WHEREAS, there may be a misunderstanding of legislative
16 intent by the courts;

17 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF
18 REPRESENTATIVES OF THE STATE OF NEW MEXICO that a
19 representative from the New Mexico district attorney's
20 association and the New Mexico criminal defense lawyers
21 association be requested to examine this apparent
22 misunderstanding and the feasibility of creating additional
23 simple degrees of felonies rather than descriptive degrees and
24 make recommendations to the appropriate interim legislative
25 committee on how to resolve the issue; and

1 BE IT FURTHER RESOLVED that copies of this memorial be
2 transmitted to the administrative office of the district
3 attorneys and the executive director of the New Mexico
4 criminal defense lawyers association.

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Ben Lujan

BEN LUJAN, SPEAKER
HOUSE OF REPRESENTATIVES

Stephen R. Arias

STEPHEN R. ARIAS, CHIEF CLERK
HOUSE OF REPRESENTATIVES