

1 SENATE BILL 160

2 **57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

3 INTRODUCED BY

4 Antonio Maestas

10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; INCREASING THE ALTERATION OF A  
12 BASIC SENTENCE FOR THE USE, BRANDISHING OR DISCHARGE OF A  
13 FIREARM.

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

16 SECTION 1. Section 31-18-16 NMSA 1978 (being Laws 1977,  
17 Chapter 216, Section 5, as amended) is amended to read:

18 "31-18-16. USE, BRANDISHING OR DISCHARGE OF FIREARM--  
19 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL  
20 LIMITED--

21 A. When a separate finding of fact by the court or  
22 jury shows that a firearm was used in relation to a drug  
23 transaction or during the commission of aggravated burglary  
24 pursuant to Section 30-16-4 NMSA 1978 or a serious violent  
25 offense, the basic sentence of imprisonment prescribed for the

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1       offense in Section 31-18-15 NMSA 1978 shall be increased by  
2       ~~[one year]~~ two years, except that when the offender is a  
3       serious youthful offender or a youthful offender who received  
4       an adult sentence, the sentence imposed by this subsection may  
5       be increased by one year.

6               B. When a separate finding of fact by the court or  
7       jury shows that a firearm was brandished in the commission of a  
8       noncapital felony, the basic sentence of imprisonment  
9       prescribed for the offense in Section 31-18-15 NMSA 1978 shall  
10       be increased by ~~[three]~~ six years, except that when the  
11       offender is a serious youthful offender or a youthful offender  
12       that received an adult sentence, the sentence imposed by this  
13       subsection may be increased by one year.

14               C. When a separate finding of fact by the court or  
15       jury shows that a firearm was discharged in the commission of a  
16       noncapital felony, the basic sentence of imprisonment  
17       prescribed for the offense in Section 31-18-15 NMSA 1978 shall  
18       be increased by ~~[five]~~ ten years, except that when the offender  
19       is a serious youthful offender or a youthful offender who  
20       received an adult sentence, the sentence imposed by this  
21       subsection may be increased by three years.

22               D. For a second or subsequent offense, when a  
23       separate finding of fact by the court or jury shows that a  
24       firearm was used, brandished, or discharged in relation to a  
25       drug transaction or during the commission of aggravated

1        burglary pursuant to Section 30-16-4 NMSA 1978 or a serious  
2        violent offense, the sentence shall be increased by [five] ten  
3        years, except that when the offender is a serious youthful  
4        offender or a youthful offender, the sentence imposed by this  
5        section may be increased by three years.

6                E. If the case is tried before a jury and if a  
7        prima facie case has been established showing that a firearm  
8        was used, brandished or discharged in relation to a drug  
9        transaction or during the commission of aggravated burglary  
10      pursuant to Section 30-16-4 NMSA 1978 or a serious violent  
11      offense, the court shall submit the issue to the jury by  
12      special interrogatory. If the case is tried by the court, the  
13      court shall decide the issue and shall make a separate finding  
14      of fact thereon.

15                F. When a separate finding of fact by the court or  
16      jury shows that a firearm was used, brandished or discharged in  
17      relation to a drug transaction or during the commission of  
18      aggravated burglary pursuant to Section 30-16-4 NMSA 1978 or a  
19      serious violent offense, the firearm is subject to seizure and  
20      forfeiture as an instrumentality pursuant to the provisions of  
21      the Forfeiture Act.

22                G. As used in this section:

23                        (1) "brandished" means displaying or making a  
24      firearm known to another person while the firearm is present on  
25      the person of the offending party with intent to intimidate or

injure a person;

(2) "in relation to a drug transaction" means participating or attempting to participate in the trafficking of a controlled substance pursuant to Section 30-31-20 NMSA 1978, distribution of a controlled substance to a minor pursuant to Section 30-31-21 NMSA 1978 or distribution of a controlled or counterfeit substance pursuant to Section 30-31-22 NMSA 1978 as a seller, purported seller or as an accomplice; and

(3) "serious violent offense" means an offense enumerated in Subparagraphs (a) through (n) of Paragraph (4) of Subsection [L] N of Section 33-2-34 NMSA 1978."

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