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**HOUSE BILL 395**

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2000**

**INTRODUCED BY**

**Joe Mohorovic**

**AN ACT**

**RELATING TO CRIMINAL SENTENCING; INCREASING THE FIREARM  
ENHANCEMENT SENTENCE; AMENDING A SECTION OF THE NMSA 1978.**

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

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

"31-18-16. USE OF FIREARM--ALTERATION OF BASIC  
SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

A. When a separate finding of fact by the court or  
jury shows that a firearm was ~~[used]~~ possessed in the  
commission of a noncapital felony under circumstances that  
indicate that possession of the firearm was related to the  
commission of the noncapital felony, the basic sentence of  
imprisonment prescribed for the offense in Section 31-18-15  
NMSA 1978 shall be increased by ~~[one year]~~ five years, and

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1 the sentence imposed by this subsection shall be the first  
2 ~~[year]~~ years served and shall not be suspended or deferred;  
3 provided that when the offender is a serious youthful  
4 offender or a youthful offender, the sentence imposed by this  
5 subsection may be increased by ~~[one year]~~ five years.

6 ~~[B. For a second or subsequent noncapital felony~~  
7 ~~in which a firearm is used, the basic sentence of~~  
8 ~~imprisonment prescribed in Section 31-18-15 NMSA 1978 shall~~  
9 ~~be increased by three years, and the sentence imposed by this~~  
10 ~~subsection shall be the first three years served and shall~~  
11 ~~not be suspended or deferred; provided that when the offender~~  
12 ~~is a serious youthful offender or a youthful offender, the~~  
13 ~~sentence imposed by this subsection may be increased by three~~  
14 ~~years.]~~

15 B. When a separate finding of fact by the court or  
16 jury shows that a firearm was discharged in the commission of  
17 a noncapital felony, the basic sentence of imprisonment  
18 prescribed for the offense in Section 31-18-15 NMSA 1978  
19 shall be increased by ten years, and the sentence imposed by  
20 this subsection shall be the first years served and shall not  
21 be suspended or deferred; provided that when the offender is  
22 a serious youthful offender or a youthful offender, the  
23 sentence imposed by this subsection may be increased by ten  
24 years.

25 C. When a separate finding of fact by the court or  
jury shows that a firearm was used and resulted in injury to  
another person in the commission of a noncapital felony, the

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1 basic sentence of imprisonment prescribed for the offense in  
2 Section 31-18-15 NMSA 1978 shall be increased by twenty  
3 years, and the sentence imposed by this subsection shall be  
4 the first years served and shall not be suspended or  
5 deferred; provided that when the offender is a serious  
6 youthful offender or a youthful offender, the sentence  
7 imposed by this subsection may be increased by twenty years.

8 [E.] D. If the case is tried before a jury and if  
9 a prima facie case has been established showing that a  
10 firearm was possessed, discharged or used in the commission  
11 of the offense, the court shall submit the issue to the jury  
12 by special interrogatory. If the case is tried by the court  
13 and if a prima facie case has been established showing that a  
14 firearm was possessed, discharged or used in the commission  
15 of the offense, the court shall decide the issue and shall  
16 make a separate finding of fact thereon."

17 **Section 2. EFFECTIVE DATE. -- The effective date of the**  
18 **provisions of this act is July 1, 2000.**