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SENATE BILL 388

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY CONVICTION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS SHALL BE USED AS A PRIOR CONVICTION FOR THE PURPOSE OF SENTENCING A HABITUAL OFFENDER.

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

Section 1. Section 31-18-17 NMSA 1978 (being Laws 1977, Chapter 216, Section 6, as amended) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC SENTENCE. --

A. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not who has incurred one prior felony conviction that was part of a separate transaction or

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1 occurrence or conditional discharge under Section 31-20-13 NMSA
2 1978 is a habitual offender and [~~his~~] that person's basic
3 sentence shall be increased by one year. The sentence imposed
4 pursuant to this subsection shall not be suspended or deferred,
5 unless the court makes a specific finding that the prior felony
6 conviction and the instant felony conviction are both for
7 nonviolent felony offenses and that justice will not be served
8 by imposing a mandatory sentence of imprisonment and that there
9 are substantial and compelling reasons, stated on the record,
10 for departing from the sentence imposed pursuant to this
11 subsection.

12 B. A person convicted of a noncapital felony in
13 this state whether within the Criminal Code or the Controlled
14 Substances Act or not who has incurred two prior felony
15 convictions that were parts of separate transactions or
16 occurrences or conditional discharge under Section 31-20-13
17 NMSA 1978 is a habitual offender and [~~his~~] that person's basic
18 sentence shall be increased by four years. The sentence
19 imposed by this subsection shall not be suspended or deferred.

20 C. A person convicted of a noncapital felony in
21 this state whether within the Criminal Code or the Controlled
22 Substances Act or not who has incurred three or more prior
23 felony convictions that were parts of separate transactions or
24 occurrences or conditional discharge under Section 31-20-13
25 NMSA 1978 is a habitual offender and [~~his~~] that person's basic

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1 sentence shall be increased by eight years. The sentence
2 imposed by this subsection shall not be suspended or deferred.

3 D. As used in this section, "prior felony
4 conviction" means:

5 (1) a conviction, when less than ten years
6 have passed prior to the instant felony conviction since the
7 person completed serving [~~his~~] a sentence or period of
8 probation or parole for the prior felony, whichever is later,
9 for a prior felony committed within New Mexico whether within
10 the Criminal Code or not, [~~but not~~] including a conviction for
11 a felony pursuant to the provisions of Section 66-8-102 NMSA
12 1978; or

13 (2) a prior felony, when less than ten years
14 have passed prior to the instant felony conviction since the
15 person completed serving [~~his~~] a sentence or period of
16 probation or parole for the prior felony, whichever is later,
17 for which the person was convicted other than an offense
18 triable by court martial if:

19 (a) the conviction was rendered by a
20 court of another state, the United States, a territory of the
21 United States or the commonwealth of Puerto Rico;

22 (b) the offense was punishable, at the
23 time of conviction, by death or a maximum term of imprisonment
24 of more than one year; or

25 (c) the offense would have been

1 classified as a felony in this state at the time of conviction.

2 E. As used in this section, "nonviolent felony
3 offense" means application of force, threatened use of force or
4 a deadly weapon was not used by the offender in the commission
5 of the offense."

6 Section 2. EFFECTIVE DATE. --The effective date of the
7 provisions of this act is July 1, 2005.

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