

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING THAT AN AGGRAVATING CIRCUMSTANCE BE PROVEN BEYOND A REASONABLE DOUBT BEFORE A JUDGE MAY INCREASE A BASIC SENTENCE OF INCARCERATION; AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

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

Section 1. Section 31-18-15.1 NMSA 1978 (being Laws 1979, Chapter 152, Section 2, as amended) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR AGGRAVATING CIRCUMSTANCES--PROCEDURE.--

A. The court shall hold a sentencing hearing to determine if mitigating or aggravating circumstances exist and take whatever evidence or statements it deems will aid it in reaching a decision to alter a basic sentence. The judge may alter the basic sentence as prescribed in Section 31-18-15 NMSA 1978 upon:

(1) a finding by the judge of any mitigating circumstances surrounding the offense or concerning the offender; or

(2) a finding by a jury or by the judge beyond a reasonable doubt of any aggravating circumstances surrounding the offense or concerning the offender.

B. When the determination of guilt or innocence for the underlying offense is made by a jury, the original

trial jury shall determine whether aggravating circumstances exist. If the offender waives a jury trial for the underlying offense, the offender retains the right to a jury determination of aggravating circumstances. If the offender waives a jury determination of aggravating circumstances, the basic sentence may be altered upon a finding by the judge beyond a reasonable doubt of any aggravating circumstances surrounding the offense or concerning the offender.

C. For the purpose of this section, the following shall not be considered aggravating circumstances:

(1) the use of a firearm, as provided in Section 31-18-16 NMSA 1978;

(2) a prior felony conviction, as provided in Section 31-18-17 NMSA 1978;

(3) the commission of a crime motivated by hate, as provided in the Hate Crimes Act; or

(4) any evidence relating to the proof of an essential element of the offense.

D. Not less than five days prior to trial or a sentencing proceeding pursuant to a plea agreement, the state shall give notice that it intends to seek an increase to an offender's basic sentence based upon aggravating circumstances. The notice shall state the aggravating circumstances upon which the sentence increase is sought.

E. Presentation of evidence or statements

regarding an alleged aggravating circumstance shall be made as soon as practicable following the determination of guilt or innocence.

F. If the judge determines to alter the basic sentence, the judge shall issue a brief statement of reasons for the alteration and incorporate that statement in the record of the case.

G. The amount of the alteration of the basic sentence for noncapital felonies shall be determined by the judge. However, in no case shall the alteration exceed one-third of the basic sentence; provided that when the offender is a serious youthful offender or a youthful offender, the judge may reduce the sentence by more than one-third of the basic sentence."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2009. _____