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HOUSE BILL 91

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Greg Nibert and William "Bill" R. Rehm and Rod Montoya

AN ACT

RELATING TO CRIME; PROVIDING FOR ALTERATION OF A SENTENCE FOR AN OFFENSE COMMITTED WHILE A PERSON IS UNDER THE JURISDICTION OF A COURT, A JAIL OR THE CORRECTIONS DEPARTMENT IN CONNECTION WITH A CRIMINAL CHARGE OR CONVICTION.

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

SECTION 1. A new section of the Criminal Sentencing Act is enacted to read:

"[NEW MATERIAL] ALTERATION OF BASIC SENTENCE--OFFENSE COMMITTED WHILE A PERSON IS UNDER THE JURISDICTION OF A COURT, A JAIL OR THE CORRECTIONS DEPARTMENT.--

A. The sentence of a person convicted of a felony shall be increased by not less than two years and not more than five years if, at the time the person committed the felony, the person:

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1 (1) was serving a period of probation or  
2 parole in connection with a previous conviction;

3 (2) was released from confinement in a jail or  
4 prison, whether the confinement related to the felony or a  
5 previous charge or conviction; or

6 (3) had escaped from confinement in a jail or  
7 prison in which the person was being held in connection with  
8 the felony or a previous charge or conviction.

9 B. The sentence of a person convicted of a  
10 misdemeanor for driving under the influence of intoxicating  
11 liquor or drugs pursuant to Section 66-8-102 NMSA 1978, a  
12 misdemeanor for battery against a household member pursuant to  
13 Section 30-3-15 NMSA 1978 or a misdemeanor for aggravated  
14 battery against a household member pursuant to Subsection B of  
15 Section 30-3-16 NMSA 1978 shall be increased by not less than  
16 thirty days and not more than six months if, at the time the  
17 person committed the misdemeanor, the person:

18 (1) was serving a period of probation or  
19 parole in connection with a previous conviction;

20 (2) was released from confinement in a jail or  
21 prison, whether the confinement related to the misdemeanor or a  
22 previous charge or conviction; or

23 (3) had escaped from confinement in a jail or  
24 prison in which the person was being held in connection with  
25 the misdemeanor or a previous charge or conviction.

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1           C. For the purposes of Paragraph (2) of Subsection  
2 A of this section and Paragraph (2) of Subsection B of this  
3 section, "released from confinement" means that a person was  
4 released from the custody of a jail or the corrections  
5 department pending trial on charges against the person,  
6 sentencing for or an appeal of a conviction against the person  
7 or adjudication of an alleged probation or parole violation by  
8 the person, whether the person was released:

- 9                   (1) on the person's own recognizance;
- 10                   (2) on a secured or an unsecured bond;
- 11                   (3) on furlough;
- 12                   (4) on work release; or
- 13                   (5) subject to court-ordered conditions of  
14 release, including participation in pre-trial services or a  
15 community corrections program.

16           D. A hearing shall be held in the court in which a  
17 person is convicted of a felony as provided in Subsection A or  
18 of a misdemeanor as provided in Subsection B of this section to  
19 determine whether the person's sentence should be increased.  
20 The court shall increase the person's sentence by a length of  
21 time determined by the court in accordance with Subsection A or  
22 B of this section upon a finding by a jury or the court beyond  
23 a reasonable doubt that, at the time the person committed the  
24 felony or misdemeanor, the person:

- 25                   (1) was serving a period of probation or

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1 parole in connection with a previous conviction;

2 (2) was released from confinement in a jail or  
3 prison facility, whether the confinement related to the felony  
4 or misdemeanor or a previous charge or conviction; or

5 (3) had escaped from confinement in a jail or  
6 prison facility in which the person was being held in  
7 connection with the felony or misdemeanor or a previous charge  
8 or conviction.

9 E. If a person was convicted by:

10 (1) a jury, that same jury shall make the  
11 factual determination provided for in Paragraphs (1) through  
12 (3) of Subsection D of this section; or

13 (2) the court following a bench trial, the  
14 person retains the right to have a jury make the factual  
15 determination provided for in Paragraphs (1) through (3) of  
16 Subsection D of this section. If the person waives that right,  
17 the court shall make the factual determination.

18 F. A sentence imposed in accordance with this  
19 section shall not be suspended or deferred and shall not  
20 preclude any other alteration to a person's sentence in  
21 accordance with the Criminal Sentencing Act or the Hate Crimes  
22 Act."

23 **SECTION 2. APPLICABILITY.**--The provisions of this act  
24 apply only to sentences for felonies or misdemeanors committed  
25 on or after the effective date of this act.

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SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2018.