

1 HOUSE BILL 35

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

3 INTRODUCED BY

4 William "Bill" R. Rehm and Gregg Schmedes and Candace Gould and
5 Tim D. Lewis and Rebecca Dow
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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; INCREASING THE SENTENCING
12 ENHANCEMENTS FOR USE OF A FIREARM IN A NONCAPITAL FELONY.
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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE--
18 SUSPENSION AND DEFERRAL LIMITED.--

19 A. When a separate finding of fact by the court or
20 jury shows that a firearm was used in the commission of a
21 noncapital felony, the basic sentence of imprisonment
22 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
23 be increased by [~~one year~~] three years, and the sentence
24 imposed by this subsection shall be the first [~~year~~] three
25 years served, [~~and shall not be suspended or deferred;~~

.216233.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~provided~~ except that when the offender is a serious youthful
2 offender or a youthful offender, the sentence imposed by this
3 subsection may be increased by ~~[one year]~~ three years.

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

13 C. If the case is tried before a jury and if a
14 prima facie case has been established showing that a firearm
15 was used in the commission of the offense, the court shall
16 submit the issue to the jury by special interrogatory. If the
17 case is tried by the court and if a prima facie case has been
18 established showing that a firearm was used in the commission
19 of the offense, the court shall decide the issue and shall make
20 a separate finding of fact thereon."