

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 114

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING JUDICIAL
DISCRETION IN IMPOSING HABITUAL OFFENDER SENTENCING
ENHANCEMENTS SJC→; ~~EXCLUDING SIMPLE POSSESSION FROM THE
DEFINITION OF "PRIOR FELONY CONVICTION"~~←SJC .

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:

.219584.1AIC March 18, 2021 (8:11pm)

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"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, SJC→~~but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978 or for simple possession as defined in this section,~~←SJC who has incurred one prior felony conviction that was part of a separate transaction or occurrence or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender, and [his] the habitual offender's basic sentence [shall] may be increased by up to one year. [~~The sentence imposed pursuant to this subsection shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.~~]

B. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not SJC→SHPAC→, ~~but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978 or for simple possession as defined in this~~

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~~section, ←SHPAC←~~ SJC who has incurred two prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender, and [~~his~~] the habitual offender's basic sentence [~~shall~~] may be increased by up to four years. [~~The sentence imposed by this subsection shall not be suspended or deferred.~~]

C. A person convicted of a noncapital felony in this state whether within the Criminal Code or the Controlled Substances Act or not SJC →SHPAC→, ~~but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978 or for simple possession as defined in this section, ←SHPAC←~~ SJC who has incurred three or more prior felony convictions that were parts of separate transactions or occurrences or conditional discharge under Section 31-20-13 NMSA 1978 is a habitual offender, and [~~his~~] the habitual offender's basic sentence [~~shall~~] may be increased by up to eight years. [~~The sentence imposed by this subsection shall not be suspended or deferred.~~]

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

(1) a conviction, when less than ten years have passed prior to the instant felony conviction since the person completed serving [~~his~~] the sentence or period of probation or parole for the prior felony, whichever is later,

for a prior felony committed within New Mexico whether within the Criminal Code or not, but not including a conviction for a felony pursuant to the provisions of Section 66-8-102 NMSA 1978 SJC→~~or a conviction for simple possession as defined in this section~~←SJC ; or

(2) a prior felony, SJC→~~other than a conviction equivalent to an offense pursuant to the provisions of Section 66-8-102 NMSA 1978 or simple possession as defined in this section,~~←SJC when less than ten years have passed prior to the instant felony conviction since the person completed serving [his] the sentence or period of probation or parole for the prior felony, whichever is later, for which the person was convicted other than an offense triable by court martial if [(a)] the conviction was rendered by a court of another state, the United States, a territory of the United States or the commonwealth of Puerto Rico and:

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

[(c)] (b) the offense would have been classified as a felony in this state at the time of conviction.

[E. ~~As used in this section, "nonviolent felony offense" means application of force, threatened use of force or a deadly weapon was not used by the offender in the commission of the offense.~~] SJC→"~~"~~←SJC

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SJC → ~~E. As used in this section, "simple possession" means possession of a controlled substance pursuant to Section 30-31-23 NMSA 1978 or possession of a dangerous drug pursuant to Subsection E of Section 26-1-16 NMSA 1978.~~ ← SJC

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