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AN ACT

RELATING TO CRIMINAL SENTENCING; EXCLUDING PERSONAL USE DRUG
POSSESSION FROM HABITUAL OFFENDER SENTENCE ALTERATION.

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, but not including a felony pursuant to
the provisions of Section 66-8-102 NMSA 1978 or a
non-distribution possession offense within the Controlled
Substances Act, 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 the habitual offender's basic sentence
shall be increased by 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

1 on the record, for departing from the sentence imposed
2 pursuant to this subsection.

3 B. A person convicted of a noncapital felony in
4 this state whether within the Criminal Code or the Controlled
5 Substances Act or not, but not including a felony pursuant to
6 the provisions of Section 66-8-102 NMSA 1978 or a
7 non-distribution possession offense within the Controlled
8 Substances Act, who has incurred two prior felony convictions
9 that were parts of separate transactions or occurrences or
10 conditional discharge under Section 31-20-13 NMSA 1978 is a
11 habitual offender and the habitual offender's basic sentence
12 shall be increased by four years. The sentence imposed by
13 this subsection shall not be suspended or deferred.

14 C. A person convicted of a noncapital felony in
15 this state whether within the Criminal Code or the Controlled
16 Substances Act or not, but not including a felony pursuant to
17 the provisions of Section 66-8-102 NMSA 1978 or a
18 non-distribution possession offense within the Controlled
19 Substances Act, who has incurred three or more prior felony
20 convictions that were parts of separate transactions or
21 occurrences or conditional discharge under Section 31-20-13
22 NMSA 1978 is a habitual offender and the habitual offender's
23 basic sentence shall be increased by eight years. The
24 sentence imposed by this subsection shall not be suspended or
25 deferred.

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

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

12 (2) a prior felony, not including a felony
13 pursuant to the provisions of Section 66-8-102 NMSA 1978 or a
14 non-distribution possession offense within the Controlled
15 Substances Act, when less than ten years have passed prior to
16 the instant felony conviction since the person completed
17 serving the sentence or period of probation or parole for the
18 prior felony, whichever is later, for which the person was
19 convicted other than an offense triable by court martial if
20 the conviction was rendered by a court of another state, the
21 United States, a territory of the United States or the
22 commonwealth of Puerto Rico and:

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

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(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."