

HOUSE BILL 75

**57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026**

INTRODUCED BY

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AN ACT

RELATING TO CRIME; PROVIDING FOR ALTERATION OF A BASIC SENTENCE  
UPON A COURT'S FINDING BASED ON CLEAR AND CONVINCING EVIDENCE  
OF MITIGATING CIRCUMSTANCES.

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:

.232713.2

1 (1) a finding by the judge by clear and  
2 convincing evidence of any mitigating circumstances surrounding  
3 the offense or concerning the offender; or

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

7 B. When the determination of guilt or innocence for  
8 the underlying offense is made by a jury, the original trial  
9 jury shall determine whether aggravating circumstances exist.  
10 If the offender waives a jury trial for the underlying offense,  
11 the offender retains the right to a jury determination of  
12 aggravating circumstances. If the offender waives a jury  
13 determination of aggravating circumstances, the basic sentence  
14 may be altered upon a finding by the judge beyond a reasonable  
15 doubt of any aggravating circumstances surrounding the offense  
16 or concerning the offender.

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

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

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

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

25 (4) any evidence relating to the proof of an

1 essential element of the offense.

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

8 E. Presentation of evidence or statements regarding  
9 an alleged aggravating circumstance shall be made as soon as  
10 practicable following the determination of guilt or innocence.

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

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