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HOUSE BILL 26

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

INTRODUCED BY

W. Ken Martinez

FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING A COURT WITH  
AUTHORITY TO DEPART FROM THE IMPOSITION OF A MANDATORY  
SENTENCE OF IMPRISONMENT FOR A HABITUAL OFFENDER; AMENDING A  
SECTION OF THE CRIMINAL SENTENCING ACT.

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 by Laws 1993, Chapter 77,  
Section 9 and also by Laws 1993, Chapter 283, Section 1) is  
amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC  
SENTENCE.--

A. For the purposes of this section, "prior felony  
conviction" means:

(1) a conviction for a prior felony committed  
within New Mexico whether within the Criminal Code or not; or

(2) any prior felony for which the person was  
convicted other than an offense triable by court martial if:

(a) the conviction was rendered by a

underscored material = new  
[bracketed material] = delete

1 court of another state, the United States, a territory of the  
2 United States or the commonwealth of Puerto Rico;

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

6 (c) the offense would have been  
7 classified as a felony in this state at the time of  
8 conviction.

9 B. Any person convicted of a noncapital felony in  
10 this state whether within the Criminal Code or the Controlled  
11 Substances Act or not who has incurred one prior felony  
12 conviction which was part of a separate transaction or  
13 occurrence or conditional discharge under Section [~~31-20-7~~]  
14 31-20-13 NMSA 1978 is a habitual offender and his basic  
15 sentence shall be increased by one year [~~and the sentence~~  
16 ~~imposed by this subsection shall not be suspended or~~  
17 ~~deferred~~]. The sentence imposed pursuant to this subsection  
18 shall not be suspended or deferred, unless the court makes a  
19 specific finding that justice will not be served by imposing a  
20 mandatory sentence of imprisonment and that there are  
21 substantial and compelling reasons, stated on the record, for  
22 departing from the sentence imposed pursuant to this  
23 subsection.

24 C. Any person convicted of a noncapital felony in  
25 this state whether within the Criminal Code or the Controlled  
Substances Act or not who has incurred two prior felony  
convictions which were parts of separate transactions or  
occurrences or conditional discharge under Section [~~31-20-7~~]  
31-20-13 NMSA 1978 is a habitual offender and his basic

underscored material = new  
[bracketed material] = delete

1 sentence shall be increased by four years [~~and the sentence~~  
2 ~~imposed by this subsection shall not be suspended or~~  
3 ~~deferred~~]. The sentence imposed pursuant to this subsection  
4 shall not be suspended or deferred, unless the court makes a  
5 specific finding that justice will not be served by imposing a  
6 mandatory sentence of imprisonment and that there are  
7 substantial and compelling reasons, stated on the record, for  
8 departing from the sentence imposed pursuant to this  
9 subsection.

10 D. Any person convicted of a noncapital felony in  
11 this state whether within the Criminal Code or the Controlled  
12 Substances Act or not who has incurred three or more prior  
13 felony convictions which were parts of separate transactions  
14 or occurrences or conditional discharge under Section  
15 [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual offender and his  
16 basic sentence shall be increased by eight years [~~and the~~  
17 ~~sentence imposed by this subsection shall not be suspended or~~  
18 ~~deferred~~]. The sentence imposed pursuant to this subsection  
19 shall not be suspended or deferred, unless the court makes a  
20 specific finding that justice will not be served by imposing a  
21 mandatory sentence of imprisonment and that there are  
22 substantial and compelling reasons, stated on the record, for  
23 departing from the sentence imposed pursuant to this  
24 subsection."

25 Section 2. EFFECTIVE DATE.--The effective date of the  
provisions of this act is July 1, 2002.