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HOUSE BILL 35

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL SENTENCING; ELIMINATING THE OPTION TO  
SUSPEND OR DEFER A HABITUAL OFFENDER SENTENCING ENHANCEMENT FOR  
NONVIOLENT FELONY OFFENSES; AMENDING THE DEFINITION OF "PRIOR  
FELONY CONVICTION"; PROVIDING PENALTIES.

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 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

.201979.2

underscoring material = new  
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1 1978 is a habitual offender and [~~his~~] the habitual offender's  
2 basic sentence shall be increased by one year. The sentence  
3 imposed pursuant to this subsection shall not be suspended or  
4 deferred [~~unless the court makes a specific finding that the~~  
5 ~~prior felony conviction and the instant felony conviction are~~  
6 ~~both for nonviolent felony offenses and that justice will not~~  
7 ~~be served by imposing a mandatory sentence of imprisonment and~~  
8 ~~that there are substantial and compelling reasons, stated on~~  
9 ~~the record, for departing from the sentence imposed pursuant to~~  
10 ~~this subsection~~].

11 B. A person convicted of a noncapital felony in  
12 this state whether within the Criminal Code or the Controlled  
13 Substances Act or not who has incurred two prior felony  
14 convictions that were parts of separate transactions or  
15 occurrences or conditional discharge under Section 31-20-13  
16 NMSA 1978 is a habitual offender and [~~his~~] the habitual  
17 offender's basic sentence shall be increased by four years.  
18 The sentence imposed by this subsection shall not be suspended  
19 or deferred.

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

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1 offender's basic sentence shall be increased by eight years.  
2 The sentence imposed by this subsection shall not be suspended  
3 or deferred.

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

6 (1) a conviction [~~when less than ten years~~  
7 ~~have passed prior to the instant felony conviction since the~~  
8 ~~person completed serving his sentence or period of probation or~~  
9 ~~parole for the prior felony, whichever is later]~~ for a prior  
10 felony committed within New Mexico whether within the Criminal  
11 Code or not, but not including a conviction for a felony  
12 pursuant to the provisions of Section 66-8-102 NMSA 1978; or

13 (2) a prior felony [~~when less than ten years~~  
14 ~~have passed prior to the instant felony conviction since the~~  
15 ~~person completed serving his sentence or period of probation or~~  
16 ~~parole for the prior felony, whichever is later]~~ for which the  
17 person was convicted other than an offense triable by court  
18 martial if:

19 (a) the conviction was rendered by a  
20 court of another state, the United States, a territory of the  
21 United States or the commonwealth of Puerto Rico;

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

25 (c) the offense would have been

underscoring material = new  
~~[bracketed material] = delete~~

1 classified as a felony in this state at the time of conviction.

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

6 SECTION 2. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is July 1, 2016.

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