

1 HOUSE BILL 120

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

3 INTRODUCED BY

4 Antonio "Moe" Maestas and Monica Youngblood

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; PROVIDING FOR A SENTENCING
12 ENHANCEMENT IF A PERSON SIXTY YEARS OF AGE OR OLDER OR A PERSON
13 WITH A DISABILITY IS INTENTIONALLY INJURED IN THE COMMISSION OF
14 A NONCAPITAL FELONY; REQUIRING CONCURRENT SENTENCING WITH OTHER
15 ENHANCEMENTS; REVISING SENTENCING ENHANCEMENTS FOR USE OF A
16 FIREARM IN THE COMMISSION OF A NONCAPITAL FELONY.

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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. A new section of the Criminal Sentencing Act
20 is enacted to read:

21 "[NEW MATERIAL] INJURY TO A PERSON SIXTY YEARS OF AGE OR
22 OLDER OR A PERSON WITH A DISABILITY--ALTERATION OF BASIC
23 SENTENCE.--

24 A. When a separate finding of fact by the court or
25 jury shows beyond a reasonable doubt that in the commission of

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1 a noncapital felony a person sixty years of age or older or a
2 person with a disability was intentionally injured, the basic
3 sentence of imprisonment prescribed for the offense in Section
4 31-18-15 NMSA 1978 may be increased by three years.

5 B. If the case is tried before a jury and if a
6 prima facie case has been established showing that in the
7 commission of the offense a person sixty years of age or older
8 or a person with a disability was intentionally injured, the
9 court shall submit the issue to the jury by special
10 interrogatory. If the case is tried by the court and if a
11 prima facie case has been established showing that in the
12 commission of the offense a person sixty years of age or older
13 or a person with a disability was intentionally injured, the
14 court shall decide the issue by a separate finding of fact.

15 C. Any alteration of the basic sentence of
16 imprisonment in accordance with this section shall be served
17 concurrently with any other enhancement of the basic sentence
18 in accordance with the Criminal Sentencing Act.

19 D. For the purposes of this section, "disability"
20 means a physical or mental disability that substantially limits
21 one or more of a person's functions, such as caring for
22 oneself, performing manual tasks, walking, seeing, hearing,
23 speaking, breathing, learning and working."

24 SECTION 2. Section 31-18-16 NMSA 1978 (being Laws 1977,
25 Chapter 216, Section 5, as amended) is amended to read:

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1 "31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE
2 ~~[SUSPENSION AND DEFERRAL LIMITED]~~.--

3 A. When a separate finding of fact by the court or
4 jury shows that a firearm was used in the commission of a
5 noncapital felony, the basic sentence of imprisonment
6 prescribed for the offense in Section 31-18-15 NMSA 1978
7 ~~[shall]~~ may be increased by ~~[one year, and the sentence imposed~~
8 ~~by this subsection shall be the first year served and shall not~~
9 ~~be suspended or deferred; provided that when the offender is a~~
10 ~~serious youthful offender or a youthful offender, the sentence~~
11 ~~imposed by this subsection may be increased by one year.~~

12 ~~B. For a second or subsequent noncapital felony in~~
13 ~~which a firearm is used, the basic sentence of imprisonment~~
14 ~~prescribed in Section 31-18-15 NMSA 1978 shall be increased by~~
15 ~~three years and the sentence imposed by this subsection shall~~
16 ~~be the first three years served and shall not be suspended or~~
17 ~~deferred; provided that when the offender is a serious youthful~~
18 ~~offender or a youthful offender, the sentence imposed by this~~
19 ~~subsection may be increased by] three years.~~

20 [G.] B. If the case is tried before a jury and if a
21 prima facie case has been established showing that a firearm
22 was used in the commission of the offense, the court shall
23 submit the issue to the jury by special interrogatory. If the
24 case is tried by the court and if a prima facie case has been
25 established showing that a firearm was used in the commission

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1 of the offense, the court shall decide the issue and shall make
2 a separate finding of fact thereon."

3 SECTION 3. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2018.

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