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HOUSE BILL 328

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Terry T. Marquardt

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTY FOR CERTAIN CRIMES WHEN COMMITTED WITH THE USE OF A FIREARM; PROVIDING PENALTIES; AMENDING THE CRIMINAL SENTENCING ACT.

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

Section 1. Section 30-7-16 NMSA 1978 (being Laws 1981, Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT, TRANSPORTATION OR POSSESSION BY A FELON--PENALTY. --

A. It is unlawful for a felon to receive, transport or possess any firearm or destructive device in this state.

B. Any person violating the provisions of this section [~~shall be~~] is guilty of a [~~fourth~~] third degree felony and shall be sentenced in accordance with the provisions of

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1 the Criminal Sentencing Act.

2 C. As used in this section:

3 (1) "destructive devices" means:

4 (a) any explosive, incendiary or poison
5 gas: 1) bomb; 2) grenade; 3) rocket having a propellant
6 charge of more than four ounces; 4) missile having an
7 explosive or incendiary charge of more than [~~one-quarter~~] one-
8 fourth ounce; 5) mine; or 6) similar device; and

9 (b) any type of weapon by whatever name
10 known [~~which~~] that will, or [~~which~~] that may be readily
11 converted to, expel a projectile by the action of an explosive
12 or other propellant, the barrel or barrels of which have a
13 bore of more than one-half inch in diameter, except a shotgun
14 or shotgun shell [~~which~~] that is generally recognized as
15 particularly suitable for sporting purposes; and

16 (c) any combination of parts either
17 designed or intended for use in converting any device into a
18 destructive device as defined in [~~Paragraphs (1) and (2)~~] this
19 paragraph and from which a destructive device may be readily
20 assembled.

21 The term "destructive device" [~~shall~~] does not include
22 any device [~~which~~] that is neither designed nor redesigned for
23 use as a weapon or any device, although originally designed
24 for use as a weapon, [~~which~~] that is redesigned for use as a
25 signaling, pyrotechnic, line throwing, safety or similar

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1 device;

2 (2) "felon" means a person who has been
3 convicted [~~in the preceding ten years~~] by a court of the
4 United States or of any state or political subdivision thereof
5 to a sentence of death or one or more years imprisonment and
6 has not been pardoned of the conviction by the appropriate
7 authority; and

8 (3) "firearm" means any weapon [~~which~~] that
9 will or is designed to or may readily be converted to expel a
10 projectile by the action of an explosion; the frame or
11 receiver of any such weapon; or any firearm muffler or firearm
12 silencer. "Firearm" includes any handgun, rifle or shotgun. "

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

15 "31-18-16. USE OF FIREARM - ALTERATION OF BASIC
16 SENTENCE - - SUSPENSION AND DEFERRAL LIMITED. - -

17 A. When a separate finding of fact by the court or
18 jury shows that a firearm was used or possessed in the
19 commission of a noncapital felony, the basic sentence of
20 imprisonment prescribed for the offense in Section 31-18-15
21 NMSA 1978 shall be increased by [~~one year~~] five years, and the
22 sentence imposed by this subsection shall be the first [~~year~~]
23 years served and shall not be suspended or deferred; provided
24 that when the offender is a serious youthful offender or a
25 youthful offender, the sentence imposed by this subsection may

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1 be increased by [~~one year~~] five years.

2 ~~[B. For a second or subsequent noncapital felony~~
3 ~~in which a firearm is used, the basic sentence of imprisonment~~
4 ~~prescribed in Section 31-18-15 NMSA 1978 shall be increased by~~
5 ~~three years, and the sentence imposed by this subsection shall~~
6 ~~be the first three years served and shall not be suspended or~~
7 ~~deferred; provided that when the offender is a serious~~
8 ~~youthful offender or a youthful offender, the sentence imposed~~
9 ~~by this subsection may be increased by three years.~~

10 ~~C.]~~ B. If the case is tried before a jury and if a
11 prima facie case has been established showing that a firearm
12 was used in the commission of the offense, the court shall
13 submit the issue to the jury by special interrogatory. If the
14 case is tried by the court and if a prima facie case has been
15 established showing that a firearm was used in the commission
16 of the offense, the court shall decide the issue and shall
17 make a separate finding of fact thereon. "