

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 919

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

AN ACT

RELATING TO CRIMINAL SENTENCING; AMENDING THE HABITUAL
OFFENDER STATUTES TO MAKE IMPOSITION OF THE ENHANCED SENTENCE
DISCRETIONARY.

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

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

3 (a) the conviction was rendered by a
4 court of another state, the United States, a territory of the
5 United States or the commonwealth of Puerto Rico;

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

9 (c) the offense would have been
10 classified as a felony in this state at the time of
11 conviction.

12 B. Any person convicted of a noncapital felony in
13 this state whether within the Criminal Code or the Controlled
14 Substances Act or not who has incurred one prior felony
15 conviction [~~which~~] that was part of a separate transaction or
16 occurrence or conditional discharge under Section [~~31-20-7~~]
17 31-20-13 NMSA 1978 is a habitual offender and his basic
18 sentence [~~shall~~] may be increased by one year [~~and the~~
19 ~~sentence imposed by this subsection shall not be suspended or~~
20 ~~deferred~~].

21 C. Any person convicted of a noncapital felony in
22 this state whether within the Criminal Code or the Controlled
23 Substances Act or not who has incurred two prior felony
24 convictions [~~which~~] that were parts of separate transactions
25 or occurrences or conditional discharge under Section

1 ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender and his
2 basic sentence ~~[shall]~~ may be increased by four years ~~[and the~~
3 ~~sentence imposed by this subsection shall not be suspended or~~
4 ~~deferred]~~.

5 D. Any person convicted of a noncapital felony in
6 this state whether within the Criminal Code or the Controlled
7 Substances Act or not who has incurred three or more prior
8 felony convictions ~~[which]~~ that were parts of separate
9 transactions or occurrences or conditional discharge under
10 Section ~~[31-20-7]~~ 31-20-13 NMSA 1978 is a habitual offender
11 and his basic sentence ~~[shall]~~ may be increased by eight years
12 ~~[and the sentence imposed by this subsection shall not be~~
13 ~~suspended or deferred]~~. "

14 Section 2. Section 31-18-20 NMSA 1978 (being Laws 1977,
15 Chapter 216, Section 9, as amended) is amended to read:

16 "31-18-20. HABITUAL OFFENDERS--PROCEEDINGS FOR
17 PROSECUTION. --

18 A. The court wherein a person has been convicted
19 of a noncapital felony and where that person has been charged
20 as a habitual offender under the provisions of Section
21 31-18-19 NMSA 1978 shall bring the defendant before it,
22 whether he is confined in prison or not. The court shall
23 inform him of:

- 24 (1) the allegations of the information; and
- 25 (2) his right to be tried as to the truth

underscored material = new
[bracketed material] = delete

1 thereof according to law.

2 B. The court shall require the defendant to say
3 whether or not he is the same person as charged in the
4 information. If the defendant denies being the same person or
5 refuses to answer or remains silent, his plea or the fact of
6 his silence shall be entered in the record and the court shall
7 then conduct a hearing to determine if the offender is the
8 same person.

9 C. If the court finds that the defendant is the
10 same person and that he was in fact convicted of the previous
11 crime or crimes as charged, the court [~~shall~~] may sentence him
12 to the punishment as prescribed in Section 31-18-17 NMSA
13 1978. "

14 Section 3. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 2001.