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SENATE BILL 419

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

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN BASIC SENTENCES OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A NEW SECTION OF THE CRIMINAL SENTENCING ACT.

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

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

" NEW MATERIAL NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS AGAINST A PERSON OR PROPERTY BECAUSE OF BIAS OR PREJUDICE-- ALTERATION OF BASIC SENTENCE-- SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by a court or jury shows beyond a reasonable doubt that an offender committed an offense in which a person was intentionally

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1 assaulted or battered or his property was intentionally  
2 damaged primarily because of the offender's bias or prejudice  
3 against a group to which that person belongs, whether or not  
4 the offender's belief or perception that the person is a  
5 member of that group is correct, the basic sentence of  
6 imprisonment prescribed for the offense in Section 31-19-1 or  
7 31-18-15 NMSA 1978 may be increased by:

8 (1) thirty days for an offender's first petty  
9 misdemeanor and, in addition without limitation, may include  
10 an alternative sentence, including community service,  
11 counseling or education. The sentence imposed pursuant to the  
12 provisions of this subsection shall be the first thirty days  
13 served and may not be suspended or deferred;

14 (2) sixty days for an offender's second or  
15 subsequent petty misdemeanor and, in addition without  
16 limitation, may include an alternative sentence, including  
17 community service, counseling or education. The sentence  
18 imposed pursuant to the provisions of this subsection shall be  
19 the first sixty days served and may not be suspended or  
20 deferred;

21 (3) ninety days for an offender's first  
22 misdemeanor and, in addition without limitation, may include  
23 an alternative sentence, including community service,  
24 counseling or education. The sentence imposed pursuant to the  
25 provisions of this subsection shall be the first ninety days

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1 served and may not be suspended or deferred;

2 (4) one hundred eighty days for an offender's  
3 second or subsequent misdemeanor and, in addition without  
4 limitation, may include an alternative sentence, including  
5 community service, counseling or education. The sentence  
6 imposed pursuant to the provisions of this subsection shall be  
7 the first one hundred eighty days served and may not be  
8 suspended or deferred;

9 (5) one year for an offender's first  
10 noncapital felony. The sentence imposed pursuant to the  
11 provisions of this subsection shall be the first year served  
12 and may not be suspended or deferred. When the offender is a  
13 serious youthful offender or a youthful offender, the sentence  
14 imposed pursuant to the provisions of this subsection may be  
15 increased by one year; and

16 (6) three years for an offender's second or  
17 subsequent noncapital felony. The sentence imposed pursuant  
18 to the provisions of this subsection shall be the first three  
19 years served and may not be suspended or deferred. When the  
20 offender is a serious youthful offender or a youthful  
21 offender, the sentence imposed pursuant to the provisions of  
22 this subsection may be increased by three years.

23 B. If the case is tried before a jury and if a  
24 prima facie case has been established showing that in the  
25 commission of the offense a person was intentionally assaulted

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1 or battered or his property was intentionally damaged because  
2 of the person's actual or perceived membership in a group,  
3 whether or not the offender's belief or perception was  
4 correct, the court shall submit the issue to the jury by  
5 special interrogatory. If the case is tried by the court and  
6 if a prima facie case has been established showing that in the  
7 commission of the offense a person was intentionally assaulted  
8 or battered or his property was intentionally damaged because  
9 of the person's actual or perceived membership in a group,  
10 whether or not the offender's belief or perception was  
11 correct, the court shall decide the issue and shall make a  
12 separate finding of fact regarding the issue. "

13 Section 2. EFFECTIVE DATE. -- The effective date of the  
14 provisions of this act is July 1, 2001.

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