

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILLS 419 & 825

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
PROVIDING INCREASES IN A BASIC SENTENCE 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 HIS PROPERTY BECAUSE OF THE
ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN,
ANCESTRY, GENDER OR SEXUAL ORIENTATION OF THE PERSON--
ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED. -

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2 A. When a separate finding of fact by the court or
3 jury shows that an offender intentionally injured a person or
4 intentionally damaged a person's property because of the actual
5 or perceived race, religion, color, national origin, ancestry,
6 gender or sexual orientation of that person, whether or not the
7 offender's belief or perception was correct, and if the
8 underlying crime is a petty misdemeanor, the basic sentence of
9 imprisonment prescribed for the offense in Section 31-19-1 NMSA
10 1978 may be increased by thirty days; provided that the total
11 sentence shall not exceed one hundred eighty days. The
12 sentence imposed pursuant to the provisions of this subsection
13 shall be the first thirty days served and shall not be
14 suspended or deferred but may include an alternative sentence
15 including community service, counseling or education.

16 B. When a separate finding of fact by the court or
17 jury shows that an offender has committed a second or
18 subsequent petty misdemeanor in which a person was
19 intentionally injured or a person's property was intentionally
20 damaged because of the actual or perceived race, religion,
21 color, national origin, ancestry, gender or sexual orientation
22 of that person, whether or not the offender's belief or
23 perception was correct, the basic sentence of imprisonment
24 prescribed for the offense in Section 31-19-1 NMSA 1978 may be

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underscoring material = new
[bracketed material] = delete

1 increased by sixty days; provided that the total sentence shall
 2 not exceed one hundred eighty days. The sentence imposed
 3 pursuant to the provisions of this subsection shall be the
 4 first sixty days served and shall not be suspended or deferred
 5 but may include an alternative sentence including community
 6 service, counseling or education.

7 C. When a separate finding of fact by the court or
 8 jury shows that an offender intentionally injured a person or
 9 intentionally damaged a person's property because of the actual
 10 or perceived race, religion, color, national origin, ancestry,
 11 gender or sexual orientation of that person, whether or not the
 12 offender's belief or perception was correct, and if the
 13 underlying crime is a misdemeanor, the basic sentence of
 14 imprisonment prescribed for the offense in Section 31-19-1 NMSA
 15 1978 may be increased by ninety days; provided that the total
 16 sentence shall not exceed three hundred sixty-four days. The
 17 sentence imposed pursuant to the provisions of this subsection
 18 shall be the first ninety days served and shall not be
 19 suspended or deferred but may include an alternative sentence
 20 including community service, counseling or education.

21 D. When a separate finding of fact by the court or
 22 jury shows that an offender has committed a second or
 23 subsequent misdemeanor in which a person was intentionally
 24 injured or a person's property was intentionally damaged
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1 because of the actual or perceived race, religion, color,
2 national origin, ancestry, gender or sexual orientation of that
3 person, whether or not the offender's belief or perception was
4 correct, the basic sentence of imprisonment prescribed for the
5 offense in Section 31-19-1 NMSA 1978 may be increased by one
6 hundred eighty days; provided that the total sentence shall not
7 exceed three hundred sixty-four days. The sentence imposed
8 pursuant to the provisions of this subsection shall be the
9 first one hundred eighty days served and shall not be suspended
10 or deferred but may include an alternative sentence including
11 community service, counseling or education.

12 E. When a separate finding of fact by the court or
13 jury shows that an offender intentionally injured a person or
14 intentionally damaged a person's property because of the actual
15 or perceived race, religion, color, national origin, ancestry,
16 gender or sexual orientation of that person, whether or not the
17 offender's belief or perception was correct, and if the
18 underlying crime is a noncapital felony, the basic sentence of
19 imprisonment prescribed for the offense in Section 31-18-15
20 NMSA 1978 may be increased by one year. The sentence imposed
21 pursuant to the provisions of this subsection shall be the
22 first year served and shall not be suspended or deferred but
23 may include an alternative sentence including community
24 service, counseling or education.

1 F. When a separate finding of fact by the court or
 2 jury shows that an offender has committed a second or
 3 subsequent noncapital felony in which a person was
 4 intentionally injured or a person's property was intentionally
 5 damaged because of the actual or perceived race, religion,
 6 color, national origin, ancestry, gender or sexual orientation
 7 of that person, whether or not the offender's belief or
 8 perception was correct, the basic sentence of imprisonment
 9 prescribed for the offense in Section 31-18-15 NMSA 1978 may be
 10 increased by three years. The sentence imposed pursuant to the
 11 provisions of this subsection shall be the first three years
 12 served and shall not be suspended or deferred but may include
 13 an alternative sentence including community service, counseling
 14 or education.

15 G. If the case is tried before a jury and if a
 16 prima facie case has been established showing that in the
 17 commission of the offense a person was intentionally injured or
 18 his property was intentionally damaged because of the actual or
 19 perceived race, religion, color, national origin, ancestry,
 20 gender or sexual orientation of that person, whether or not the
 21 offender's belief or perception was correct, the court shall
 22 submit the issue to the jury by special interrogatory. If the
 23 case is tried by the court and if a prima facie case has been
 24 established showing that in the commission of the offense a
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1 person was intentionally injured or his property was
2 intentionally damaged because of the actual or perceived race,
3 religion, color, national origin, ancestry, gender or sexual
4 orientation of that person, whether or not the offender's
5 belief or perception was correct, the court shall decide the
6 issue and shall make a separate finding of fact regarding the
7 issue. "

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