

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 26

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING A COURT WITH
AUTHORITY TO DEPART FROM THE IMPOSITION OF A MANDATORY
SENTENCE OF IMPRISONMENT FOR CERTAIN HABITUAL OFFENDERS;
AMENDING A SECTION OF THE CRIMINAL SENTENCING ACT.

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~~

1 ~~within New Mexico whether within the Criminal Code or not; or~~

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

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

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

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

13 ~~B.]~~ A. Any person convicted of a noncapital felony
14 in this state, whether within the Criminal Code or the
15 Controlled Substances Act or not, who has incurred one prior
16 felony conviction [~~which~~] that was part of a separate
17 transaction or occurrence or conditional discharge under
18 Section [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual offender
19 and his basic sentence shall be increased by one year [~~and the~~
20 ~~sentence imposed by this subsection shall not be suspended or~~
21 ~~deferred~~]. The sentence imposed pursuant to this subsection
22 shall not be suspended or deferred, unless the court makes a
23 specific finding that the prior felony conviction and the
24 instant felony conviction are both for nonviolent felony
25 offenses and that justice will not be served by imposing a

1 mandatory sentence of imprisonment and that there are
 2 substantial and compelling reasons, stated on the record, for
 3 departing from the sentence imposed pursuant to this
 4 subsection.

5 ~~[E-]~~ B. Any person convicted of a noncapital
 6 felony in this state whether within the Criminal Code or the
 7 Controlled Substances Act or not who has incurred two 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 be increased by four years and
 12 the sentence imposed by this subsection shall not be suspended
 13 or deferred.

14 ~~[D-]~~ C. Any person convicted of a noncapital
 15 felony in this state whether within the Criminal Code or the
 16 Controlled Substances Act or not who has incurred three or
 17 more prior felony convictions [~~which~~] that were parts of
 18 separate transactions or occurrences or conditional discharge
 19 under Section [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual
 20 offender and his basic sentence shall be increased by eight
 21 years and the sentence imposed by this subsection shall not be
 22 suspended or deferred.

23 D. As used in this section, "prior felony
 24 conviction" means:

25 (1) a conviction, when less than ten years

1 have passed prior to the instant felony conviction since the
2 person completed serving his sentence or period of probation
3 for the prior felony, whichever is later, for a prior felony
4 committed within New Mexico whether within the Criminal Code
5 or not; or

6 (2) any prior felony, when less than ten
7 years have passed prior to the instant felony conviction since
8 the person completed serving his sentence or period of
9 probation for the prior felony, whichever is later, for which
10 the person was convicted other than an offense triable by
11 court martial if:

12 (a) the conviction was rendered by a
13 court of another state, the United States, a territory of the
14 United States or the commonwealth of Puerto Rico;

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

18 (c) the offense would have been
19 classified as a felony in this state at the time of
20 conviction.

21 E. As used in this section, "nonviolent felony
22 offense" means application of force, threatened use of force
23 or a deadly weapon was not used by the offender in the
24 commission of the offense."

25 Section 2. EFFECTIVE DATE. --The effective date of the

1 provisions of this act is July 1, 2002.

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