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SENATE BILL 295

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

INTRODUCED BY

Manny M Aragon

FOR THE CORRECTIONS OVERSIGHT AND JUSTICE COMMITTEE

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING A COURT WITH  
AUTHORITY TO DEPART FROM THE IMPOSITION OF A MANDATORY  
SENTENCE OF IMPRISONMENT FOR A HABITUAL OFFENDER; 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

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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. Any person convicted of a noncapital felony in  
14 this state whether within the Criminal Code or the Controlled  
15 Substances Act or not who has incurred one prior felony  
16 conviction which was part of a separate transaction or  
17 occurrence or conditional discharge under Section [~~31-20-7~~]  
18 31-20-13 NMSA 1978 is a habitual offender and his basic  
19 sentence shall be increased by one year [~~and the sentence~~  
20 ~~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 justice will not be served by imposing a  
24 mandatory sentence of imprisonment and that there are  
25 substantial and compelling reasons, stated on the record, for

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1 departing from the sentence imposed pursuant to this  
2 subsection.

3 C. Any person convicted of a noncapital felony in  
4 this state whether within the Criminal Code or the Controlled  
5 Substances Act or not who has incurred two prior felony  
6 convictions which were parts of separate transactions or  
7 occurrences or conditional discharge under Section [~~31-20-7~~]  
8 31-20-13 NMSA 1978 is a habitual offender and his basic  
9 sentence shall be increased by four years [~~and the sentence~~  
10 ~~imposed by this subsection shall not be suspended or~~  
11 ~~deferred~~]. The sentence imposed pursuant to this subsection  
12 shall not be suspended or deferred, unless the court makes a  
13 specific finding that justice will not be served by imposing a  
14 mandatory sentence of imprisonment and that there are  
15 substantial and compelling reasons, stated on the record, for  
16 departing from the sentence imposed pursuant to this  
17 subsection.

18 D. Any person convicted of a noncapital felony in  
19 this state whether within the Criminal Code or the Controlled  
20 Substances Act or not who has incurred three or more prior  
21 felony convictions which were parts of separate transactions  
22 or occurrences or conditional discharge under Section  
23 [~~31-20-7~~] 31-20-13 NMSA 1978 is a habitual offender and his  
24 basic sentence shall be increased by eight years [~~and the~~  
25 ~~sentence imposed by this subsection shall not be suspended or~~

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1 ~~deferred~~]. The sentence imposed pursuant to this subsection  
2 shall not be suspended or deferred, unless the court makes a  
3 specific finding that justice will not be served by imposing a  
4 mandatory sentence of imprisonment and that there are  
5 substantial and compelling reasons, stated on the record, for  
6 departing from the sentence imposed pursuant to this  
7 subsection. "

8 Section 2. EFFECTIVE DATE. --The effective date of the  
9 provisions of this act is July 1, 2002.

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underscored material = new  
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