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HOUSE BILL 736

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

Keith J. Gardner

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING FOR ENHANCEMENT OF A SENTENCE WHEN A FIREARM IS DISCHARGED WITHIN A SCHOOL ZONE DURING THE COMMISSION OF A FELONY.

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

Section 1. Section 31-18-16 NMSA 1978 (being Laws 1977, Chapter 216, Section 5, as amended) is amended to read:

"31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL LIMITED.--

A. When a separate finding of fact by the court or jury shows that a firearm was used in the commission of a noncapital felony, the basic sentence of imprisonment prescribed for the offense in Section 31-18-15 NMSA 1978 shall be increased by one year, and the sentence imposed by this subsection shall be the first year served and shall not be

underscored material = new
[bracketed material] = delete

1 suspended or deferred; provided that when the offender is a
2 serious youthful offender or a youthful offender, the sentence
3 imposed by this subsection may be increased by one year.

4 B. For a second or subsequent noncapital felony in
5 which a firearm is used, the basic sentence of imprisonment
6 prescribed in Section 31-18-15 NMSA 1978 shall be increased by
7 three years, and the sentence imposed by this subsection shall
8 be the first three years served and shall not be suspended or
9 deferred; provided that when the offender is a serious youthful
10 offender or a youthful offender, the sentence imposed by this
11 subsection may be increased by three years.

12 C. If the firearm used in the commission of a
13 noncapital felony is discharged within a school zone, the basic
14 sentence of imprisonment prescribed for the offense in Section
15 31-18-15 NMSA 1978 shall be increased by two years, and the
16 sentence imposed by this subsection shall be the first two
17 years served and shall not be suspended or deferred; provided
18 that when the offender is a serious youthful offender or a
19 youthful offender, the sentence imposed by this subsection may
20 be increased by two years.

21 D. For a second or subsequent noncapital felony in
22 which a firearm is discharged within a school zone, the basic
23 sentence of imprisonment prescribed for the offense in Section
24 31-18-15 NMSA 1978 shall be increased by four years, and the
25 sentence imposed by this subsection shall be the first four

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1 years served and shall not be suspended or deferred; provided
2 that when the offender is a serious youthful offender or a
3 youthful offender, the sentence imposed by this subsection may
4 be increased by four years.

5 ~~[G.]~~ E. If the case is tried before a jury and if a
6 prima facie case has been established showing that a firearm
7 was used in the commission of the offense or discharged within
8 a school zone during the commission of the offense, the court
9 shall submit the issue to the jury by special interrogatory.
10 If the case is tried by the court and if a prima facie case has
11 been established showing that a firearm was used in the
12 commission of the offense or discharged within a school zone
13 during the commission of the offense, the court shall decide
14 the issue and shall make a separate finding of fact thereon.

15 F. As used in this section, "school zone" means a
16 public school, parochial school or private school or property
17 that is used for school purposes and the area within one
18 thousand feet of the school property line, but it does not mean
19 a post-secondary school."

20 Section 2. EFFECTIVE DATE.--The effective date of the
21 provisions of this act is July 1, 2006.

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