

1 SENATE BILL 229

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Gay G. Kernan

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; PROVIDING FOR THE ENHANCEMENT
12 OF A BASIC SENTENCE IF A PERSON SIXTY YEARS OF AGE OR OLDER IS
13 INTENTIONALLY INJURED IN THE COMMISSION OF A NONCAPITAL FELONY;
14 REQUIRING CONCURRENT SENTENCING WITH OTHER ENHANCEMENTS;
15 REMOVING AGE STATUS FROM THE HATE CRIMES ACT.

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

18 SECTION 1. A new section of the Criminal Sentencing Act
19 is enacted to read:

20 "[NEW MATERIAL] INJURY TO PERSONS SIXTY YEARS OF AGE OR
21 OLDER--ALTERATION OF BASIC SENTENCE.--

22 A. When a separate finding of fact by the court or
23 jury shows beyond a reasonable doubt that in the commission of
24 a noncapital felony a person sixty years of age or older was
25 intentionally injured, the basic sentence of imprisonment

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1 prescribed for the offense in Section 31-18-15 NMSA 1978 shall
2 be increased as follows:

3 (1) if the injury inflicted is not likely to
4 cause death or great bodily harm but does cause painful
5 temporary disfigurement or temporary loss or impairment of the
6 functions of any member or organ of the body, the basic
7 sentence shall be increased by one year; provided that when the
8 offender is a serious youthful offender or a youthful offender,
9 the sentence imposed by this paragraph may be increased by one
10 year; and

11 (2) if the injury inflicted causes great
12 bodily harm or is done with a deadly weapon or in any manner
13 whereby great bodily harm or death could be inflicted, the
14 basic sentence shall be increased by two years; provided that
15 when the offender is a serious youthful offender or a youthful
16 offender, the sentence imposed by this paragraph may be
17 increased by two years.

18 B. If the case is tried before a jury and if a
19 prima facie case has been established showing that in the
20 commission of the offense a person sixty years of age or older
21 was intentionally injured, the court shall submit the issue to
22 the jury by special interrogatory. If the case is tried by the
23 court and if a prima facie case has been established showing
24 that in the commission of the offense a person sixty years of
25 age or older was intentionally injured, the court shall decide

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1 the issue by a separate finding of fact.

2 C. Any alteration of the basic sentence of
3 imprisonment pursuant to the provisions of this section shall
4 be served concurrently with any other enhancement of the basic
5 sentence pursuant to the provisions of the Criminal Sentencing
6 Act."

7 SECTION 2. Section 31-18B-2 NMSA 1978 (being Laws 2003,
8 Chapter 384, Section 2, as amended) is amended to read:

9 "31-18B-2. DEFINITIONS.--As used in the Hate Crimes Act:

10 [~~A.~~] ~~"age" means sixty years of age or older;~~

11 ~~B.]~~ A. "gender identity" means a person's
12 self-perception, or perception of that person by another, of
13 the person's identity as a male or female based upon the
14 person's appearance, behavior or physical characteristics that
15 are in accord or opposed to the person's physical anatomy,
16 chromosomal sex or sex at birth;

17 [~~G.]~~ B. "disability" means that the person has a
18 physical or mental disability that substantially limits one or
19 more of that person's functions, such as caring for oneself,
20 performing manual tasks, walking, seeing, hearing, speaking,
21 breathing, learning and working;

22 [~~D.]~~ C. "motivated by hate" means the commission of
23 a crime with the intent to commit the crime because of the
24 actual or perceived race, religion, color, national origin,
25 ancestry, [~~age~~] handicapped status, gender, sexual orientation

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1 or gender identity of the victim, whether or not the offender's
2 belief or perception was correct; and

3 ~~[E.]~~ D. "sexual orientation" means heterosexuality,
4 homosexuality or bisexuality, whether actual or perceived."

5 **SECTION 3. EFFECTIVE DATE.**--The effective date of the
6 provisions of this act is July 1, 2013.