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HOUSE BILL 34

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIME; PROVIDING THAT A PRIOR FELONY CONVICTION  
WITHIN TWENTY-FIVE YEARS OF A SUBSEQUENT FELONY CONVICTION BE  
CONSIDERED FOR THE PURPOSE OF HABITUAL OFFENDER SENTENCING.

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) is amended to read:

"31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC  
SENTENCE.--

A. A person convicted of a noncapital felony in  
this state whether within the Criminal Code or the Controlled  
Substances Act or not who has incurred one prior felony  
conviction that was part of a separate transaction or  
occurrence or conditional discharge under Section 31-20-13 NMSA  
1978 is a habitual offender and ~~[his]~~ the habitual offender's

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1 basic sentence shall be increased by one year. The sentence  
2 imposed pursuant to this subsection shall not be suspended or  
3 deferred, unless the court makes a specific finding that the  
4 prior felony conviction and the instant felony conviction are  
5 both for nonviolent felony offenses and that justice will not  
6 be served by imposing a mandatory sentence of imprisonment and  
7 that there are substantial and compelling reasons, stated on  
8 the record, for departing from the sentence imposed pursuant to  
9 this subsection.

10 B. A person convicted of a noncapital felony in  
11 this state whether within the Criminal Code or the Controlled  
12 Substances Act or not who has incurred two prior felony  
13 convictions that were parts of separate transactions or  
14 occurrences or conditional discharge under Section 31-20-13  
15 NMSA 1978 is a habitual offender and ~~[his]~~ the habitual  
16 offender's basic sentence shall be increased by four years.  
17 The sentence imposed by this subsection shall not be suspended  
18 or deferred.

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

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1 The sentence imposed by this subsection shall not be suspended  
2 or deferred.

3 D. As used in this section, "prior felony  
4 conviction" means:

5 (1) a conviction, when less than [~~ten~~] twenty-  
6 five years have passed prior to the instant felony conviction  
7 since the person completed serving [~~his~~] the sentence or period  
8 of probation or parole for the prior felony, whichever is  
9 later, for a prior felony committed within New Mexico whether  
10 within the Criminal Code or not [~~but not including a conviction~~  
11 ~~for a felony pursuant to the provisions of Section 66-8-102~~  
12 ~~NMSA 1978~~]; or

13 (2) a prior felony, when less than [~~ten~~]  
14 twenty-five years have passed prior to the instant felony  
15 conviction since the person completed serving [~~his~~] the  
16 sentence or period of probation or parole for the prior felony,  
17 whichever is later, for which the person was convicted other  
18 than an offense triable by court martial if:

19 (a) the conviction was rendered by a  
20 court of another state, the United States, a territory of the  
21 United States or the commonwealth of Puerto Rico;

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

25 (c) the offense would have been

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1 classified as a felony in this state at the time of conviction.

2 E. As used in this section, "nonviolent felony  
3 offense" means application of force, threatened use of force or  
4 a deadly weapon was not used by the offender in the commission  
5 of the offense."

6 SECTION 2. APPLICABILITY.--The provisions of this act  
7 apply to persons sentenced on or after July 1, 2020.

8 SECTION 3. EFFECTIVE DATE.--The effective date of the  
9 provisions of this act is July 1, 2020.