

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 114

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

AN ACT

RELATING TO CRIMINAL JUSTICE REFORM; PROVIDING JUDICIAL
DISCRETION IN IMPOSING HABITUAL OFFENDER SENTENCING
ENHANCEMENTS; EXCLUDING SIMPLE POSSESSION FROM THE DEFINITION
OF "PRIOR FELONY CONVICTION".

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, but not including a conviction for a
felony pursuant to the provisions of Section 66-8-102 NMSA 1978
or for simple possession as defined in this section, who has

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underscoring material = new
[bracketed material] = delete

1 incurred one prior felony conviction that was part of a
2 separate transaction or occurrence or conditional discharge
3 under Section 31-20-13 NMSA 1978 is a habitual offender, and
4 ~~[his]~~ the habitual offender's basic sentence ~~[shall]~~ may be
5 increased by up to one year. ~~[The sentence imposed pursuant to~~
6 ~~this subsection shall not be suspended or deferred, unless the~~
7 ~~court makes a specific finding that the prior felony conviction~~
8 ~~and the instant felony conviction are both for nonviolent~~
9 ~~felony offenses and that justice will not be served by imposing~~
10 ~~a mandatory sentence of imprisonment and that there are~~
11 ~~substantial and compelling reasons, stated on the record, for~~
12 ~~departing from the sentence imposed pursuant to this~~
13 ~~subsection.]~~

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

23 C. A person convicted of a noncapital felony in
24 this state whether within the Criminal Code or the Controlled
25 Substances Act or not who has incurred three or more prior

1 felony convictions that were parts of separate transactions or
2 occurrences or conditional discharge under Section 31-20-13
3 NMSA 1978 is a habitual offender, and ~~[his]~~ the habitual
4 offender's basic sentence ~~[shall]~~ may be increased by up to
5 eight years. ~~[The sentence imposed by this subsection shall~~
6 ~~not be suspended or deferred.]~~

7 D. As used in this section, "prior felony
8 conviction" means:

9 (1) a conviction, when less than ten years
10 have passed prior to the instant felony conviction since the
11 person completed serving ~~[his]~~ the sentence or period of
12 probation or parole for the prior felony, whichever is later,
13 for a prior felony committed within New Mexico whether within
14 the Criminal Code or not, but not including a conviction for a
15 felony pursuant to the provisions of Section 66-8-102 NMSA 1978
16 or a conviction for simple possession as defined in this
17 section; or

18 (2) a prior felony, other than a conviction
19 equivalent to an offense pursuant to the provisions of Section
20 66-8-102 NMSA 1978 or simple possession as defined in this
21 section, when less than ten years have passed prior to the
22 instant felony conviction since the person completed serving
23 ~~[his]~~ the sentence or period of probation or parole for the
24 prior felony, whichever is later, for which the person was
25 convicted other than an offense triable by court martial if

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1 [~~(a)~~] the conviction was rendered by a court of another state,
2 the United States, a territory of the United States or the
3 commonwealth of Puerto Rico and:

4 [~~(b)~~] (a) the offense was punishable, at
5 the time of conviction, by death or a maximum term of
6 imprisonment of more than one year; or

7 [~~(c)~~] (b) the offense would have been
8 classified as a felony in this state at the time of conviction.

9 ~~[E. As used in this section, "nonviolent felony~~
10 ~~offense" means application of force, threatened use of force or~~
11 ~~a deadly weapon was not used by the offender in the commission~~
12 ~~of the offense.]~~

13 E. As used in this section, "simple possession"
14 means possession of a controlled substance pursuant to Section
15 30-31-23 NMSA 1978 or possession of a dangerous drug pursuant
16 to Subsection E of Section 26-1-16 NMSA 1978."