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HOUSE BILL 64

**55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

INTRODUCED BY

Miguel P. Garcia

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING THE INCLUSION OF  
BRANDISHING A FIREARM IN ANY RELATED GUILTY PLEA.

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. BRANDISHING 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 brandished 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 three years, except that when the offender is a  
serious youthful offender or a youthful offender, the sentence  
imposed by this subsection may be increased by one year.

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1           B. For a second or subsequent noncapital felony in  
2 which a firearm is brandished, the basic sentence of  
3 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be  
4 increased by five years, except that when the offender is a  
5 serious youthful offender or a youthful offender, the sentence  
6 imposed by this subsection may be increased by three years.

7           C. If the case is tried before a jury and if a  
8 prima facie case has been established showing that a firearm  
9 was brandished in the commission of the offense, the court  
10 shall submit the issue to the jury by special interrogatory.  
11 If the case is tried by the court and if a prima facie case has  
12 been established showing that a firearm was brandished in the  
13 commission of the offense, the court shall decide the issue and  
14 shall make a separate finding of fact thereon.

15           D. When the indictment or information alleges the  
16 brandishing of a firearm in the commission of a noncapital  
17 felony, any plea of guilty thereafter entered in satisfaction  
18 of the noncapital felony shall include a plea of guilty to  
19 violation of this section.

20           ~~[D.]~~ E. As used in this section, "brandished" means  
21 displaying or making a firearm known to another person while  
22 the firearm is present on the person of the offending party  
23 with intent to intimidate or injure a person."