

1 SENATE BILL 120

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022**

3 INTRODUCED BY

4 Martin Hickey

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9  
10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; ENHANCING THE SENTENCES FOR  
12 SECOND AND SUBSEQUENT INSTANCES OF BRANDISHING A FIREARM DURING  
13 THE COMMISSION OF A NONCAPITAL FELONY.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

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

20 A. When a separate finding of fact by the court or  
21 jury shows that a firearm was brandished in the commission of a  
22 noncapital felony, the basic sentence of imprisonment  
23 prescribed for the offense in Section 31-18-15 NMSA 1978 shall  
24 be increased by [~~three~~] five years, except that when the  
25 offender is a serious youthful offender or a youthful offender,

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1 the sentence imposed by this subsection may be increased by one  
2 year.

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

10 C. For a third or subsequent noncapital felony in  
11 which a firearm is brandished, the basic sentence of  
12 imprisonment prescribed in Section 31-18-15 NMSA 1978 shall be  
13 increased by nine years, except that when the offender is a  
14 serious youthful offender or a youthful offender, the sentence  
15 imposed by this subsection may be increased by five years.

16 ~~[G.]~~ D. If the case is tried before a jury and if a  
17 prima facie case has been established showing that a firearm  
18 was brandished in the commission of the offense, the court  
19 shall submit the issue to the jury by special interrogatory.  
20 If the case is tried by the court and if a prima facie case has  
21 been established showing that a firearm was brandished in the  
22 commission of the offense, the court shall decide the issue and  
23 shall make a separate finding of fact thereon.

24 ~~[D.]~~ E. As used in this section, "brandished" means  
25 displaying or making a firearm known to another person while

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underscoring material = new  
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1 the firearm is present on the person of the offending party  
2 with intent to intimidate or injure a person."

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