

HOUSE BILL 547

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Rod Montoya and Andrea Reeb

AN ACT

RELATING TO CRIMINAL SENTENCING; REQUIRING A JUDGE TO ONLY
CONSIDER AGGRAVATING CIRCUMSTANCES FOR THE ALTERATION OF A
BASIC SENTENCE OF A PERSON CONVICTED OF A SERIOUS VIOLENT
OFFENSE.

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

SECTION 1. Section 31-18-15.1 NMSA 1978 (being Laws 1979,
Chapter 152, Section 2, as amended) is amended to read:

"31-18-15.1. ALTERATION OF BASIC SENTENCE--MITIGATING OR
AGGRAVATING CIRCUMSTANCES--PROCEDURE.--

A. The court shall hold a sentencing hearing to
determine if mitigating or aggravating circumstances exist and
take whatever evidence or statements it deems will aid it in
reaching a decision to alter a basic sentence. For a defendant
convicted of a serious violent offense as defined in Section

.229675.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 33-2-34 NMSA 1978, the judge may only consider aggravating
2 circumstances. The judge may alter the basic sentence as
3 prescribed in Section 31-18-15 NMSA 1978 upon:

4 (1) a finding by the judge of any mitigating
5 circumstances surrounding the offense or concerning the
6 offender; or

7 (2) a finding by a jury or by the judge beyond
8 a reasonable doubt of any aggravating circumstances surrounding
9 the offense or concerning the offender.

10 B. When the determination of guilt or innocence for
11 the underlying offense is made by a jury, the original trial
12 jury shall determine whether aggravating circumstances exist.
13 If the offender waives a jury trial for the underlying offense,
14 the offender retains the right to a jury determination of
15 aggravating circumstances. If the offender waives a jury
16 determination of aggravating circumstances, the basic sentence
17 may be altered upon a finding by the judge beyond a reasonable
18 doubt of any aggravating circumstances surrounding the offense
19 or concerning the offender.

20 C. For the purpose of this section, the following
21 shall not be considered aggravating circumstances:

22 (1) the use of a firearm, as provided in
23 Section 31-18-16 NMSA 1978;

24 (2) a prior felony conviction, as provided in
25 Section 31-18-17 NMSA 1978;

.229675.1

1 (3) the commission of a crime motivated by
2 hate, as provided in the Hate Crimes Act; or

3 (4) any evidence relating to the proof of an
4 essential element of the offense.

5 D. Not less than five days prior to trial or a
6 sentencing proceeding pursuant to a plea agreement, the state
7 shall give notice that it intends to seek an increase to an
8 offender's basic sentence based upon aggravating circumstances.
9 The notice shall state the aggravating circumstances upon which
10 the sentence increase is sought.

11 E. Presentation of evidence or statements regarding
12 an alleged aggravating circumstance shall be made as soon as
13 practicable following the determination of guilt or innocence.

14 F. If the judge determines to alter the basic
15 sentence, the judge shall issue a brief statement of reasons
16 for the alteration and incorporate that statement in the record
17 of the case.

18 G. The amount of the alteration of the basic
19 sentence for noncapital felonies shall be determined by the
20 judge. However, in no case shall the alteration exceed one-
21 third of the basic sentence; provided that when the offender is
22 a serious youthful offender or a youthful offender, the judge
23 may reduce the sentence by more than one-third of the basic
24 sentence."