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SENATE BILL 197

**48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008**

INTRODUCED BY

Joseph J. Carraro

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; PROVIDING THAT A FELONY CONVICTION FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS SHALL BE USED IN THE SAME MANNER AS ANY OTHER FELONY WHEN SENTENCING A HABITUAL OFFENDER.

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]~~, including a felony conviction pursuant to Section 66-8-102 NMSA 1978, who has incurred one prior

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

13 B. A person convicted of a noncapital felony in  
14 this state [~~whether within the Criminal Code or the Controlled~~  
15 ~~Substances Act or not~~], including a felony conviction pursuant  
16 to Section 66-8-102 NMSA 1978, who has incurred two prior  
17 felony 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~~] that person's basic  
20 sentence shall be increased by four years. The sentence  
21 imposed by this subsection shall not be suspended or deferred.

22 C. A person convicted of a noncapital felony in  
23 this state [~~whether within the Criminal Code or the Controlled~~  
24 ~~Substances Act or not~~], including a felony conviction pursuant  
25 to Section 66-8-102 NMSA 1978, who has incurred three or more

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1 prior felony convictions that were parts of separate  
2 transactions or occurrences or conditional discharge under  
3 Section 31-20-13 NMSA 1978 is a habitual offender and [his]  
4 that person's basic sentence shall be increased by eight years.  
5 The sentence imposed by this subsection shall not be suspended  
6 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] a 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  
15 a felony pursuant to the provisions of Section 66-8-102 NMSA  
16 1978; or

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

23 (a) the conviction was rendered by a  
24 court of another state, the United States, a territory of the  
25 United States or the commonwealth of Puerto Rico;

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

(c) the offense would have been classified as a felony in this state at the time of conviction.

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

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.