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HOUSE BILL 19

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY

Nate Gentry and Daniel A. Ivey-Soto

AN ACT

RELATING TO PUBLIC SAFETY; INCREASING THE PENALTY FOR A FELON
IN POSSESSION OF A FIREARM OR DESTRUCTIVE DEVICE TO A THIRD
DEGREE FELONY; PROVIDING EXCEPTIONS.

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

SECTION 1. Section 30-7-16 NMSA 1978 (being Laws 1981,
Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,
TRANSPORTATION OR POSSESSION BY A FELON--PENALTY.--

A. It is unlawful for a felon to receive, transport
or possess any firearm or destructive device in this state.

B. Any person violating the provisions of this
section shall be guilty of a fourth degree felony and shall be
sentenced in accordance with the provisions of the Criminal
Sentencing Act; provided that the violation of and the sentence

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1 imposed pursuant to this subsection shall be increased to a
2 violation of and the sentence for a third degree felony if:

3 (1) the person has previously been convicted
4 of a serious violent offense as defined in Paragraph (4) of
5 Subsection L of Section 33-2-34 NMSA 1978; or

6 (2) the court makes a specific finding that
7 the prior felony conviction was a violent felony offense and
8 that justice will be served by imposing a sentence for a third
9 degree felony and that there are substantial and compelling
10 reasons, stated on the record, for departing from the sentence
11 for a fourth degree felony.

12 C. As used in this section:

13 (1) except as provided in Paragraph (2) of
14 this subsection, "destructive device" means:

15 (a) any explosive, incendiary or poison
16 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge
17 of more than four ounces; 4) missile having an explosive or
18 incendiary charge of more than one-fourth ounce; 5) mine; or 6)
19 similar device;

20 (b) any type of weapon by whatever name
21 known that will, or that may be readily converted to, expel a
22 projectile by the action of an explosive or other propellant,
23 the barrel or barrels of which have a bore of more than one-
24 half inch in diameter, except a shotgun or shotgun shell that
25 is generally recognized as particularly suitable for sporting

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1 purposes; [~~and~~] or

2 (c) any combination of parts either
3 designed or intended for use in converting any device into a
4 destructive device as defined in this paragraph and from which
5 a destructive device may be readily assembled;

6 (2) the term "destructive device" does not
7 include any device that is neither designed nor redesigned for
8 use as a weapon or any device, although originally designed for
9 use as a weapon, that is redesigned for use as a signaling,
10 pyrotechnic, line throwing, safety or similar device;

11 [~~(2)~~] (3) "felon" means a person convicted of
12 a felony offense by a court of the United States or of any
13 state or political subdivision thereof and:

14 (a) less than ten years have passed
15 since the person completed serving [~~his~~] a sentence or period
16 of probation for the felony conviction, whichever is later;

17 (b) the person has not been pardoned for
18 the felony conviction by the proper authority; and

19 (c) the person has not received a
20 deferred sentence; and

21 [~~(3)~~] (4) "firearm" means any weapon that will
22 or is designed to or may readily be converted to expel a
23 projectile by the action of an explosion; the frame or receiver
24 of any such weapon; or any firearm muffler or firearm silencer.
25 "Firearm" includes any handgun, rifle or shotgun."