

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 63

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Pauline B. Eisenstadt

AN ACT

RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A BASIC SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING A NEW SECTION OF THE CRIMINAL SENTENCING ACT.

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

Section 1. A new section of the Criminal Sentencing Act is enacted to read:

" NEW MATERIAL NONCAPITAL FELONIES, MISDEMEANORS OR PETTY MISDEMEANORS AGAINST A PERSON OR HIS PROPERTY BECAUSE OF THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY, GENDER, SEXUAL ORIENTATION OR DISABILITY OF THE PERSON-- ALTERATION OF BASIC SENTENCE-- SUSPENSION AND DEFERRAL LIMITED. --

A. When a separate finding of fact by the court or

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 jury shows that an offender committed a petty misdemeanor in
2 which a person was intentionally injured or his property was
3 intentionally damaged because of the actual or perceived race,
4 religion, color, national origin, ancestry, gender, sexual
5 orientation or disability of that person, whether or not the
6 offender's belief or perception was correct, the basic
7 sentence of imprisonment prescribed for the offense in Section
8 31-19-1 NMSA 1978 may be increased by thirty days. The
9 sentence imposed pursuant to the provisions of this subsection
10 shall be the first thirty days served and may be suspended or
11 deferred.

12 B. When an offender commits a second or subsequent
13 petty misdemeanor in which a person was intentionally injured
14 or his property was intentionally damaged because of the
15 actual or perceived race, religion, color, national origin,
16 ancestry, gender, sexual orientation or disability of that
17 person, whether or not the offender's belief or perception was
18 correct, the basic sentence of imprisonment prescribed for the
19 offense in Section 31-19-1 NMSA 1978 may be increased by sixty
20 days. The sentence imposed pursuant to the provisions of this
21 subsection shall be the first sixty days served and may be
22 suspended or deferred.

23 C. When a separate finding of fact by the court or
24 jury shows that an offender committed a misdemeanor in which a
25 person was intentionally injured or his property was

underscored material = new
[bracketed material] = delete

1 intentionally damaged because of the actual or perceived race,
2 religion, color, national origin, ancestry, gender, sexual
3 orientation or disability of that person, whether or not the
4 offender's belief or perception was correct, the basic
5 sentence of imprisonment prescribed for the offense in Section
6 31-19-1 NMSA 1978 may be increased by ninety days. The
7 sentence imposed pursuant to the provisions of this subsection
8 shall be the first ninety days served and may be suspended or
9 deferred.

10 D. When an offender commits a second or subsequent
11 misdemeanor in which a person was intentionally injured or his
12 property was intentionally damaged because of the actual or
13 perceived race, religion, color, national origin, ancestry,
14 gender, sexual orientation or disability of that person,
15 whether or not the offender's belief or perception was
16 correct, the basic sentence of imprisonment prescribed for the
17 offense in Section 31-19-1 NMSA 1978 may be increased by one
18 hundred eighty days. The sentence imposed pursuant to the
19 provisions of this subsection shall be the first one hundred
20 eighty days served and may be suspended or deferred.

21 E. When a separate finding of fact by the court or
22 jury shows that an offender committed a noncapital felony in
23 which a person was intentionally injured or his property was
24 intentionally damaged because of the actual or perceived race,
25 religion, color, national origin, ancestry, gender, sexual

underscored material = new
[bracketed material] = delete

1 orientation or disability of that person, whether or not the
2 offender's belief or perception was correct, the basic
3 sentence of imprisonment prescribed for the offense in Section
4 31-18-15 NMSA 1978 may be increased by one year. The sentence
5 imposed pursuant to the provisions of this subsection shall be
6 the first year served and may be suspended or deferred. When
7 the offender is a serious youthful offender or a youthful
8 offender, the sentence imposed pursuant to the provisions of
9 this subsection may be increased by one year.

10 F. When an offender commits a second or subsequent
11 noncapital felony in which a person was intentionally injured
12 or his property was intentionally damaged because of the
13 actual or perceived race, religion, color, national origin,
14 ancestry, gender, sexual orientation or disability of that
15 person, whether or not the offender's belief or perception was
16 correct, the basic sentence of imprisonment prescribed for the
17 offense in Section 31-18-15 NMSA 1978 may be increased by
18 three years. The sentence imposed pursuant to the provisions
19 of this subsection shall be the first three years served and
20 may be suspended or deferred. When the offender is a serious
21 youthful offender or a youthful offender, the sentence imposed
22 pursuant to the provisions of this subsection may be increased
23 by three years.

24 G. If the case is tried before a jury and if a
25 prima facie case has been established showing that in the

underscored material = new
[bracketed material] = delete

1 commission of the offense a person was intentionally injured
2 or his property was intentionally damaged because of the
3 actual or perceived race, religion, color, national origin,
4 ancestry, gender, sexual orientation or disability of that
5 person, whether or not the offender's belief or perception was
6 correct, the court shall submit the issue to the jury by
7 special interrogatory. If the case is tried by the court and
8 if a prima facie case has been established showing that in the
9 commission of the offense a person was intentionally injured
10 or his property was intentionally damaged because of the
11 actual or perceived race, religion, color, national origin,
12 ancestry, gender, sexual orientation or disability of that
13 person, whether or not the offender's belief or perception was
14 correct, the court shall decide the issue and shall make a
15 separate finding of fact regarding the issue.

16 H. As used in this section, "disability" means a
17 physical, developmental or mental impairment that
18 substantially limits one or more of a person's functions,
19 including caring for oneself, performing manual tasks,
20 walking, seeing, hearing, speaking, breathing or learning. "

21 Section 2. EFFECTIVE DATE. --The effective date of the
22 provisions of this act is July 1, 1999.

FORTY-FOURTH LEGISLATURE

FIRST SESSION, 1999

SB 63/a

January 25, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 63

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 1, line 22, strike the comma after "GENDER",
insert in lieu thereof "OR" and strike "OR DISABILITY".

2. On page 2, line 4, strike the comma after "gender",
insert in lieu thereof "or" and on page 2, line 5, strike "or
disability".

3. On page 2, line 8, before the period insert "not to
exceed one hundred eighty days".

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 63

Page 7

4. On page 2, line 16, strike the comma after "gender",
insert in lieu thereof "or" and strike "or disability".

5. On page 2, line 20, before the period insert "not to
exceed one hundred eight days".

6. On page 3, line 2, strike the comma after "gender",
insert in lieu thereof "or" and on page 3, line 3, strike "or
disability".

7. On page 3, line 6, before the period insert "not to
exceed three hundred sixty-four days".

8. On page 3, line 14, strike the comma after "gender",
insert in lieu thereof "or" and strike "or disability".

9. On page 3, line 18, before the period insert "not to
exceed three hundred sixty-four days".

10. On page 3, line 25, strike the comma after "gender",

. 124536. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 63

Page 8

insert in lieu thereof "or" and on page 4, line 1, strike "or
disability".

11. On page 4, line 7, strike "serious youthful offender
or a".

12. On page 4, line 14, strike the comma after "gender",
insert in lieu thereof "or" and strike "or disability".

13. On page 4, lines 20 and 21, strike "serious youthful
offender or a".

14. On page 5, line 4, strike the comma after "gender",
insert in lieu thereof "or" and strike "or disability".

15. On page 5, line 12, strike the comma after "gender",
insert in lieu thereof "or" and strike "or disability".

16. On page 5, lines 16 through 20, strike all of
Subsection H up to the quotation marks.

. 124536. 1

underscored material = new
[bracketed material] = delete

FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

SJC/SB 63

Page 9

and thence referred to the PUBLIC AFFAIRS COMMITTEE.

Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 2 Against

Yes: 6

No: Davis, Payne

Excused: None

. 124536. 1

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SJC/SB 63

Page 10

Absent: None

S0063JU1

. 126243. 1

. 124536. 1

underscoring = new
~~[bracketed material]~~ = delete

1 FORTY- FOURTH LEGI SLATURE
2 FIRST SESSI ON, 1999

3 SJC/SB 63

Page 11

4
5
6 FORTY- FOURTH LEGI SLATURE
7 FIRST SESSI ON, 1999
8
9

10
11
12 February 3, 1999
13

14 Mr. President:

15
16 Your PUBLIC AFFAIRS COMMI TTEE, to whom has been
17 referred

18
19 SENATE BILL 63, as amended
20

21
22 has had it under consideration and reports same with
23 recommendation that it DO PASS.
24
25

. 124536. 1

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

SJC/SB 63

Page 12

Respectfully submitted,

Shannon Robinson, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

. 124536. 1

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FORTY- FOURTH LEGI SLATURE
FIRST SESSI ON, 1999

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SJC/SB 63

Page 13

Yes: 5

No: Boi tano

Excused: Ingle, Stockard, Robi nson

Absent: None

S0063PA1

. 124536. 1

underscored material = new
~~[bracketed material]~~ = delete

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 February 19, 1999
7

8 Mr. Speaker:
9

10 Your JUDICIARY COMMITTEE, to whom has been referred
11

12 SENATE BILL 63, as amended
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS.

16 Respectfully submitted,
17

18
19
20 _____
21 R. David Pederson, Chairman
22
23
24
25

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HJ/SB 63

Page 15

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 7 For 4 Against

Yes: 7

No: Godbey, Mallory, Taylor, T., Vaughn

Excused: Luna

Absent: None

J: \99BillSWP\S0063

underscored material = new
[bracketed material] = delete