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HOUSE BILL 105

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE SENTENCING
ENHANCEMENTS FOR USE OF A FIREARM IN A NONCAPITAL FELONY.

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

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

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

A. When a separate finding of fact by the court or
jury shows that a firearm was used in the commission of a
noncapital felony, the basic sentence of imprisonment
prescribed for the offense in Section 31-18-15 NMSA 1978 shall
be increased by ~~[one year]~~ three years, and the sentence
imposed by this subsection shall be the first ~~[year]~~ three
years served ~~[and shall not be suspended or deferred]~~; provided

.211565.1

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

underscored material = new
[bracketed material] = delete

1 that when the offender is a serious youthful offender or a
2 youthful offender, the sentence imposed by this subsection may
3 be increased by [~~one year~~] three years.

4 B. For a second or subsequent noncapital felony in
5 which a firearm is used, the basic sentence of imprisonment
6 prescribed in Section 31-18-15 NMSA 1978 shall be increased by
7 [~~three~~] five years, and the sentence imposed by this subsection
8 shall be the first [~~three~~] five years served and shall not be
9 suspended or deferred; provided that when the offender is a
10 serious youthful offender or a youthful offender, the sentence
11 imposed by this subsection may be increased by [~~three~~] five
12 years.

13 C. If the case is tried before a jury and if a
14 prima facie case has been established showing that a firearm
15 was used in the commission of the offense, the court shall
16 submit the issue to the jury by special interrogatory. If the
17 case is tried by the court and if a prima facie case has been
18 established showing that a firearm was used in the commission
19 of the offense, the court shall decide the issue and shall make
20 a separate finding of fact thereon."