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HOUSE BILL 35

**54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020**

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;~~

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

underscored material = new  
[bracketed material] = delete

1 ~~provided~~] except that when the offender is a serious youthful  
2 offender or a youthful offender, the sentence imposed by this  
3 subsection may 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~~] except that when the offender  
10 is a serious youthful offender or a youthful offender, the  
11 sentence imposed by this subsection may be increased by [~~three~~]  
12 five 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."