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HOUSE BILL 82

**52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

INTRODUCED BY

Jim Dines

AN ACT

RELATING TO DRIVING 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 TREATED 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 conviction for a felony pursuant to Section 66-8-102 NMSA 1978, who has incurred one

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1 prior felony conviction that was part of a separate transaction  
2 or occurrence or conditional discharge under Section 31-20-13  
3 NMSA 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 conviction for a felony  
16 pursuant to Section 66-8-102 NMSA 1978, who has incurred two  
17 prior felony convictions that were parts of separate  
18 transactions or occurrences or conditional discharge under  
19 Section 31-20-13 NMSA 1978 is a habitual offender and ~~[his]~~  
20 that person's basic sentence shall be increased by four years.  
21 The sentence imposed by this subsection shall not be suspended  
22 or deferred.

23 C. A person convicted of a noncapital felony in  
24 this state ~~[whether within the Criminal Code or the Controlled~~  
25 ~~Substances Act or not]~~, including a conviction for a felony

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

8 D. A prior conviction for driving under the  
9 influence of intoxicating liquor or drugs pursuant to Section  
10 66-8-102 NMSA 1978 that is used to enhance the punishment for  
11 driving under the influence of intoxicating liquor or drugs  
12 shall also be used as the basis for enhancement of the  
13 offender's sentence pursuant to this section.

14 [~~D.~~] E. As used in this section, "prior felony  
15 conviction" means:

16 (1) a conviction, when less than ten years  
17 have passed prior to the instant felony conviction since the  
18 person completed serving [~~his~~] a sentence or period of  
19 probation or parole for the prior felony, whichever is later,  
20 for a prior felony committed within New Mexico [~~whether within~~  
21 ~~the Criminal Code or not, but not~~], including a conviction for  
22 a felony pursuant to the provisions of Section 66-8-102 NMSA  
23 1978; or

24 (2) a prior felony, when less than ten years  
25 have passed prior to the instant felony conviction since the

underscoring material = new  
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1 person completed serving [~~his~~] a sentence or period of  
2 probation or parole for the prior felony, whichever is later,  
3 for which the person was convicted other than an offense  
4 triable by court martial if:

5 (a) the conviction was rendered by a  
6 court of another state, the United States, a territory of the  
7 United States or the commonwealth of Puerto Rico;

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

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

13 [~~E.~~] F. As used in this section, "nonviolent felony  
14 offense" means application of force, threatened use of force or  
15 a deadly weapon was not used by the offender in the commission  
16 of the offense."

17 **SECTION 2. EFFECTIVE DATE.**--The effective date of the  
18 provisions of this act is July 1, 2016.