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HOUSE BILL 91

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

INTRODUCED BY

Greg Nibert and William "Bill" R. Rehm and Rod Montoya

DISCUSSION DRAFT

AN ACT

RELATING TO CRIME; PROVIDING FOR ALTERATION OF A SENTENCE FOR AN OFFENSE COMMITTED WHILE A PERSON IS UNDER THE JURISDICTION OF A COURT, A JAIL OR THE CORRECTIONS DEPARTMENT IN CONNECTION WITH A CRIMINAL CHARGE OR CONVICTION.

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] ALTERATION OF BASIC SENTENCE--OFFENSE COMMITTED WHILE A PERSON IS UNDER THE JURISDICTION OF A COURT, A JAIL OR THE CORRECTIONS DEPARTMENT.--

A. The sentence of a person convicted of a felony shall be increased by not less than one year and not more than five years if, at the time the person committed the felony, the person:

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1 (1) was serving a period of probation or  
2 parole in connection with a previous conviction;

3 (2) was released from confinement in a jail or  
4 prison, whether the confinement related to the felony or a  
5 previous charge or conviction; or

6 (3) had escaped from confinement in a jail or  
7 prison in which the person was being held in connection with  
8 the felony or a previous charge or conviction.

9 B. The sentence of a person convicted of a  
10 misdemeanor for driving under the influence of intoxicating  
11 liquor or drugs pursuant to Section 66-8-102 NMSA 1978, a  
12 misdemeanor for battery against a household member pursuant to  
13 Section 30-3-15 NMSA 1978 or a misdemeanor for aggravated  
14 battery against a household member pursuant to Subsection B of  
15 Section 30-3-16 NMSA 1978 shall be increased by not less than  
16 thirty days and not more than six months if, at the time the  
17 person committed the misdemeanor, the person:

18 (1) was serving a period of probation or  
19 parole in connection with a previous conviction;

20 (2) was released from confinement in a jail or  
21 prison, whether the confinement related to the misdemeanor or a  
22 previous charge or conviction; or

23 (3) had escaped from confinement in a jail or  
24 prison in which the person was being held in connection with  
25 the misdemeanor or a previous charge or conviction.

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1           C. For the purposes of Paragraph (2) of Subsection  
2 A of this section and Paragraph (2) of Subsection B of this  
3 section, "released from confinement" means that a person was  
4 released from the custody of a jail or the corrections  
5 department pending trial on charges against the person,  
6 sentencing for or an appeal of a conviction against the person  
7 or adjudication of an alleged probation or parole violation by  
8 the person, whether the person was released:

- 9                   (1) on the person's own recognizance;
- 10                   (2) on a secured or an unsecured bond;
- 11                   (3) on furlough;
- 12                   (4) on work release; or
- 13                   (5) subject to court-ordered conditions of
- 14 release, including participation in pre-trial services or a
- 15 community corrections program.

16           D. A hearing shall be held in the court in which a  
17 person is convicted of a felony as provided in Subsection A or  
18 of a misdemeanor as provided in Subsection B of this section to  
19 determine whether the person's sentence should be increased.  
20 If the person was convicted by:

- 21                   (1) a jury, that jury shall also determine
- 22 whether the person's sentence should be increased; or
- 23                   (2) the court, because the person waived the
- 24 right to a jury in the criminal trial, the person retains the
- 25 right to have a jury determine whether the person's sentence

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1 should be increased.

2 E. A court shall increase a person's sentence by a  
3 length of time determined by the court in accordance with  
4 Subsection A or B of this section upon a finding by a jury or  
5 the court beyond a reasonable doubt that, at the time the  
6 person committed the felony or misdemeanor, the person:

7 (1) was serving a period of probation or  
8 parole in connection with a previous conviction;

9 (2) was released from confinement in a jail or  
10 prison facility, whether the confinement related to the felony  
11 or misdemeanor or a previous charge or conviction; or

12 (3) had escaped from confinement in a jail or  
13 prison facility in which the person was being held in  
14 connection with the felony or misdemeanor or a previous charge  
15 or conviction.

16 F. A sentence imposed in accordance with this  
17 section shall not be suspended or deferred and shall not  
18 preclude any other alteration to a person's sentence in  
19 accordance with the Criminal Sentencing Act or the Hate Crimes  
20 Act."

21 **SECTION 2. APPLICABILITY.**--The provisions of this act  
22 apply only to sentences for felonies or misdemeanors committed  
23 on or after the effective date of this act.

24 **SECTION 3. EFFECTIVE DATE.**--The effective date of the  
25 provisions of this act is July 1, 2018.

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