

1 SENATE BILL 187

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Leo Jaramillo

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10 AN ACT

11 RELATING TO CRIMINAL SENTENCING; EXCLUDING PERSONAL USE DRUG
12 POSSESSION FROM HABITUAL OFFENDER SENTENCE ALTERATION.

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

15 SECTION 1. Section 31-18-17 NMSA 1978 (being Laws 1977,
16 Chapter 216, Section 6, as amended) is amended to read:

17 "31-18-17. HABITUAL OFFENDERS--ALTERATION OF BASIC
18 SENTENCE.--

19 A. A person convicted of a noncapital felony in
20 this state whether within the Criminal Code or the Controlled
21 Substances Act or not, but not including a felony pursuant to
22 the provisions of Section 66-8-102 NMSA 1978 or a non-
23 distribution possession offense within the Controlled
24 Substances Act, who has incurred one prior felony conviction
25 that was part of a separate transaction or occurrence or

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underscored material = new
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underscoring material = new
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1 conditional discharge under Section 31-20-13 NMSA 1978 is a
2 habitual offender and [~~his~~] the habitual offender's basic
3 sentence shall be increased by one year. The sentence imposed
4 pursuant to this subsection shall not be suspended or deferred,
5 unless the court makes a specific finding that the prior felony
6 conviction and the instant felony conviction are both for
7 nonviolent felony offenses and that justice will not be served
8 by imposing a mandatory sentence of imprisonment and that there
9 are substantial and compelling reasons, stated on the record,
10 for departing from the sentence imposed pursuant to this
11 subsection.

12 B. A person convicted of a noncapital felony in
13 this state whether within the Criminal Code or the Controlled
14 Substances Act or not, but not including a felony pursuant to
15 the provisions of Section 66-8-102 NMSA 1978 or a non-
16 distribution possession offense within the Controlled
17 Substances Act, who has incurred two prior felony convictions
18 that were parts of separate transactions or occurrences or
19 conditional discharge under Section 31-20-13 NMSA 1978 is a
20 habitual offender and [~~his~~] the habitual offender's basic
21 sentence shall be increased by four years. The sentence
22 imposed by this subsection shall not be suspended 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, but not including a felony pursuant to

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

10 D. As used in this section, "prior felony
11 conviction" means:

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

21 (2) a prior felony, not including a felony
22 pursuant to the provisions of Section 66-8-102 NMSA 1978 or a
23 non-distribution possession offense within the Controlled
24 Substances Act, when less than ten years have passed prior to
25 the instant felony conviction since the person completed

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

1 serving ~~[his]~~ the sentence or period of probation or parole for
2 the prior felony, whichever is later, for which the person was
3 convicted other than an offense triable by court martial if
4 ~~[(a)]~~ the conviction was rendered by a court of another state,
5 the United States, a territory of the United States or the
6 commonwealth of Puerto Rico and:

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

10 ~~[(c)]~~ (b) the offense would have been
11 classified as a felony in this state at the time of conviction.

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

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