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HOUSE BILL 297

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL SENTENCING; INCREASING THE PENALTIES FOR A  
FELON POSSESSING A FIREARM; INCREASING THE PENALTIES FOR  
STEALING A FIREARM; 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 30-7-16 NMSA 1978 (being Laws 1981,  
Chapter 225, Section 1, as amended) is amended to read:

"30-7-16. FIREARMS OR DESTRUCTIVE DEVICES--RECEIPT,  
TRANSPORTATION OR POSSESSION BY A FELON--PENALTY.--

A. It is unlawful for a felon to receive, transport  
or possess any firearm or destructive device in this state.

B. ~~[Any person violating the provisions of this  
section shall be guilty of a fourth degree felony and shall be  
sentenced in accordance with the provisions of the Criminal~~

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1 ~~Sentencing Act.]~~ A person who violates the provisions of this  
2 section is:

3 (1) for the first offense, guilty of a third  
4 degree felony and shall be sentenced, notwithstanding the  
5 provisions of Section 31-18-15 NMSA 1978, to a minimum term of  
6 imprisonment of five years; and

7 (2) for the second or subsequent offense,  
8 guilty of a second degree felony and shall be sentenced,  
9 notwithstanding the provisions of Section 31-18-15 NMSA 1978,  
10 to a minimum term of imprisonment of five years.

11 The imposition of a minimum, mandatory term of  
12 imprisonment pursuant to the provisions of this subsection  
13 shall not be interpreted to preclude the imposition of  
14 sentencing enhancements pursuant to the provisions of the  
15 Criminal Sentencing Act.

16 C. As used in this section:

17 (1) "destructive device" means:  
18 (a) any explosive, incendiary or poison  
19 gas: 1) bomb; 2) grenade; 3) rocket having a propellant charge  
20 of more than four ounces; 4) missile having an explosive or  
21 incendiary charge of more than one-fourth ounce; 5) mine; or 6)  
22 similar device;

23 (b) any type of weapon by whatever name  
24 known that will, or that may be readily converted to, expel a  
25 projectile by the action of an explosive or other propellant,

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1 the barrel or barrels of which have a bore of more than one-  
2 half inch in diameter, except a shotgun or shotgun shell that  
3 is generally recognized as particularly suitable for sporting  
4 purposes; and

5 (c) any combination of parts either  
6 designed or intended for use in converting any device into a  
7 destructive device as defined in this paragraph and from which  
8 a destructive device may be readily assembled.

9 The term "destructive device" does not include any device  
10 that is neither designed nor redesigned for use as a weapon or  
11 any device, although originally designed for use as a weapon,  
12 that is redesigned for use as a signaling, pyrotechnic, line  
13 throwing, safety or similar device;

14 (2) "felon" means a person convicted of a  
15 felony offense by a court of the United States or of any state  
16 or political subdivision thereof and:

17 (a) less than ten years have passed  
18 since the person completed serving ~~[his]~~ a sentence or period  
19 of probation for the felony conviction, whichever is later;

20 (b) the person has not been pardoned for  
21 the felony conviction by the proper authority; and

22 (c) the person has not received a  
23 deferred sentence; and

24 (3) "firearm" means any weapon that will or is  
25 designed to or may readily be converted to expel a projectile

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1 by the action of an explosion; the frame or receiver of any  
2 such weapon; or any firearm muffler or firearm silencer.

3 "Firearm" includes any handgun, rifle or shotgun."

4 SECTION 2. Section 30-16-1 NMSA 1978 (being Laws 1963,  
5 Chapter 303, Section 16-1, as amended) is amended to read:

6 "30-16-1. LARCENY.--

7 A. Larceny consists of the stealing of anything of  
8 value that belongs to another.

9 B. Whoever commits larceny when the value of the  
10 property stolen is two hundred fifty dollars (\$250) or less is  
11 guilty of a petty misdemeanor.

12 C. Whoever commits larceny when the value of the  
13 property stolen is over two hundred fifty dollars (\$250) but  
14 not more than five hundred dollars (\$500) is guilty of a  
15 misdemeanor.

16 D. Whoever commits larceny when the value of the  
17 property stolen is over five hundred dollars (\$500) but not  
18 more than two thousand five hundred dollars (\$2,500) is guilty  
19 of a fourth degree felony.

20 E. Whoever commits larceny when the value of the  
21 property stolen is over two thousand five hundred dollars  
22 (\$2,500) but not more than twenty thousand dollars (\$20,000) is  
23 guilty of a third degree felony.

24 F. Whoever commits larceny when the value of the  
25 property stolen is over twenty thousand dollars (\$20,000) is

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1 guilty of a second degree felony.

2 G. Whoever commits larceny when the property of  
3 value stolen is livestock is guilty of a third degree felony  
4 regardless of its value.

5 H. Whoever commits larceny when the property of  
6 value stolen is a firearm is guilty of a fourth degree felony  
7 when its value is less than two thousand five hundred dollars  
8 (\$2,500).

9 I. If the property stolen is a firearm:

10 (1) for a first offense, the basic sentence of  
11 imprisonment prescribed for the offense in Section 31-18-15  
12 NMSA 1978 shall be increased by five years, and the sentence  
13 imposed by this subsection shall be the first five years served  
14 and shall not be suspended or deferred; and

15 (2) for a second or subsequent offense, the  
16 basic sentence of imprisonment prescribed for the offense in  
17 Section 31-18-15 NMSA 1978 shall be increased by ten years, and  
18 the sentence imposed by this subsection shall be the first ten  
19 years served and shall not be suspended or deferred."

20 SECTION 3. Section 31-18-16 NMSA 1978 (being Laws 1977,  
21 Chapter 216, Section 5, as amended) is amended to read:

22 "31-18-16. USE OF FIREARM--ALTERATION OF BASIC SENTENCE--  
23 SUSPENSION AND DEFERRAL LIMITED.--

24 A. When a separate finding of fact by the court or  
25 jury shows that a firearm was used in the commission of a

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1 noncapital felony, the basic sentence of imprisonment  
2 prescribed for the offense in Section 31-18-15 NMSA 1978 shall  
3 be increased by [~~one year~~] five years, and the sentence imposed  
4 by this subsection shall be the first [~~year~~] five years served  
5 and shall not be suspended or deferred; provided that when the  
6 offender is a serious youthful offender or a youthful offender,  
7 the sentence imposed by this subsection may be increased by  
8 [~~one year~~] five years.

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

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

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SECTION 4. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2013.