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HOUSE BILL 235

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

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO CRIMINAL SENTENCING; MAKING THE SENTENCING
ENHANCEMENT FOR FIRST USE OF A FIREARM IN THE COMMISSION OF A
NONCAPITAL FELONY THREE YEARS; MAKING THE SENTENCING
ENHANCEMENT FOR SECOND AND SUBSEQUENT USE OF A FIREARM IN THE
COMMISSION OF A NONCAPITAL FELONY SIX YEARS.

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

.202505.3

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

underscored material = new
[bracketed material] = delete

1 be increased by ~~[one year, and the sentence imposed by this~~
2 ~~subsection shall be the first year served and shall not be~~
3 ~~suspended or deferred; provided that when the offender is a~~
4 ~~serious youthful offender or a youthful offender, the sentence~~
5 ~~imposed by this subsection may be increased by one year] three~~
6 ~~years.~~

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

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

23 SECTION 2. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2016.