

ALBUQUERQUE CRIMINAL LAWYER BLOG

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Firearm Sentencing Enhancement in New Mexico

Sentencing in New Mexico felony criminal cases can be pretty tricky as both the prosecution and defense argue their positions to the judge. The State typically argues that the defendant should spend time in prison while Defense counsel argues against prison time.

Sentencing is greatly complicated when there is a firearm involved with the felony charges. When the defendant is convicted of a felony and a firearm is used, there really is no opportunity for the Defense to argue for deferred jail time. In other words, the defendant, if convicted, is going to prison. Prison time is mandatory.

When a defendant is convicted of a non-capital felony and through a separate finding of fact by the jury it is determined that a firearm was used, the judge shall increase the sentence by one year. For a second felony conviction where a firearm is used the sentencing is enhanced by three years.

It is important to realize that a firearm is defined as a weapon designed to propel an object by an explosion. There is a significant distinction between a firearm and a deadly weapon. Many objects may be used as deadly weapons. Much of the classification of a deadly weapon depends upon intent. As such, a lamp if used with deadly intent constitutes a deadly weapon. Firearm classification is more restrictive. For instance, a bb gun or even a C-O2 air gun may constitute deadly weapons depending upon the intent and use, but neither are considered firearms.

The Defendant is looking at mandatory jail time for firearm sentencing because the Judge is mandated by law to enhance the sentence. Moreover, the defendant must spend the entire firearm enhanced sentence in prison. "Good time" reduction in sentencing is not allowed.

There are a few defense strategies that may avoid the felony firearm enhancements. One possible strategy used by Defense Counsel to avoid jail time is to negotiate with the state and plea bargain the underlying felony offense to a misdemeanor. When the felony is pled down to a misdemeanor, the firearm enhancement is taken out of the equation in determining sentencing.

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Another possible approach is through the jury instructions issued to the jury at trial. The goal is to include a lesser misdemeanor offense in the jury instructions. This will allow the jury to consider the less serious offense. If the jury finds guilt on only misdemeanor offenses, the felony firearm enhancement is not in play because the underlying charge is a misdemeanor and not a felony.

Firearm charges are extremely serious. They take many possible defense and plea options off the table. Anyone facing a firearm related charges would be well advised to contact an experienced [New Mexico criminal law attorney](#) as early in the criminal process as possible.

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