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## FISCAL IMPACT REPORT

**BILL NUMBER:** House Bill 73

**SHORT TITLE:** Sentence Deferment for Repeat Offender

**SPONSOR:** Reeb/Terrazas

**LAST UPDATE:** \_\_\_\_\_ **ORIGINAL DATE:** 02/02/2026 **ANALYST:** Sanchez

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund
<b>Total</b>	<b>No fiscal impact</b>	<b>At least \$27.2</b>	<b>At least \$27.2</b>	<b>At least \$54.4</b>	<b>Recurring</b>	<b>General Fund</b>

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to House Bill 74

### Sources of Information

LFC Files

#### Agency or Agencies Providing Analysis

Administrative Office of the District Attorneys

Law Offices of the Public Defender

Adult Parole Board

Corrections Department

#### Agency or Agencies That Were Asked for Analysis but did not Respond

New Mexico Sentencing Commission

Administrative Office of the Courts

## SUMMARY

### Synopsis of House Bill 73

House Bill 73 (HB73) seeks to amend Section 31-20-3 NMSA 1978 of the Criminal Sentencing Act to restrict the authority of courts to defer or suspend sentences for certain felony offenses when a defendant has a prior felony conviction. Specifically, the bill proposes that, upon entering a judgment of conviction for a second- or third-degree felony, a court may not defer or suspend more than two-thirds of the basic sentence if the defendant has previously been convicted of any felony. This limitation would apply regardless of the nature or jurisdiction of the prior felony, as long as it qualifies as a felony under New Mexico law. Section 31-20-3 currently allows judicial discretion to defer or suspend sentences for non-capital and non-first-degree felony crimes when

the court is satisfied that the defendant's behavior merits such leniency. HB73 narrows this discretion in cases involving a history of felony conviction, thereby mandating a minimum incarceration threshold of one-third of the basic sentence for repeat felony offenders convicted of second- or third-degree felonies.

The bill retains existing prohibitions on deferring or suspending sentences for capital and first-degree felony convictions, which are categorically excluded from such relief under current law. The statutory language revision changes the phrase "entry of" to "entering" a judgment of conviction and modernizes the provision's structure for clarity and conformity with legislative drafting conventions. The legislation represents a substantive policy change in sentencing practices by conditioning judicial leniency on a defendant's criminal history, which could increase the time served by certain offenders. This change could have direct implications for judicial sentencing discretion, incarceration rates, and correctional system resource allocation. By amending Section 31-20-3 NMSA 1978 in this manner, HB73 effectively establishes a statutory floor for sentence execution in specified felony cases involving recidivist offenders.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, which is May 20, 2026.

## **FISCAL IMPLICATIONS**

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and the length of time served that might result from HB73 could have significant fiscal implications for the state. HB73 amends Section 31-20-3 NMSA 1978 to limit a court's discretion to defer or suspend a sentence for certain felony convictions if the defendant has a prior felony. As a result, more individuals may be sentenced to prison terms that would have otherwise been served on probation or with a suspended sentence. Additionally, individuals already incarcerated may serve longer periods in custody because of the one-third sentencing floor established by the bill.

The Corrections Department reports the average annual cost to incarcerate an inmate in New Mexico in FY25 was approximately \$61.5 thousand. However, because the state operates on a fixed-cost prison infrastructure, the Legislative Finance Committee (LFC) estimates a marginal cost of \$27.2 thousand per additional inmate per year. Any increase in the prison population resulting from this bill will accrue costs at this marginal rate. Over time, even a modest increase in admissions or sentence lengths could result in measurable growth in overall correctional spending.

The Law Office of the Public Defender (LOPD) anticipates HB73 could lead to a higher volume of felony jury trials. By removing the incentive of a fully suspended or deferred sentence, the bill could reduce plea agreements and increase the number of defendants opting to proceed to trial. According to LOPD workload data, trials require significantly more attorney time—up to 40 hours per trial compared to 3.5 hours per plea in crimes against persons. If only 10 percent of repeat felony cases went to trial rather than resolving through pleas, LOPD estimates additional costs of at least \$1 million annually. If the share of trials is higher, total agency costs could approach \$10 million annually statewide.

These projected costs align with LFC's established fiscal analysis methodology, which recognizes that increasing penalties or limiting judicial discretion typically raises long-term costs

by increasing prison admissions or average lengths of stay. Although the exact number of individuals affected by the bill is uncertain, the bill's structure—restricting sentence reductions for repeat felony offenders—makes it likely that some proportion of second- and third-degree felony convictions will result in longer incarceration. This trend is expected to increase cumulative state correctional costs over time. As with other measures affecting criminal sentencing, these impacts are more predictable and quantifiable than cost changes for other actors in the justice system, such as courts or law enforcement, which are not included in this estimate but may also experience workload increases.

## SIGNIFICANT ISSUES

HB73 proposes a statutory limitation on judicial discretion in sentencing, which marks a departure from longstanding principles of individualized sentencing in New Mexico law. Under current law, trial courts are afforded broad authority to suspend or defer all or part of a non-capital sentence, provided the court determines that doing so serves the interests of justice and the best interests of both the defendant and the public. Courts may also modify sentences based on statutory mitigating or aggravating factors, tailoring outcomes to the circumstances of the offense and the offender. By capping suspension or deferral of the basic sentence at two-thirds for repeat felony offenders convicted of second- or third-degree felonies, HB73 alters the framework under which courts make those individualized determinations.

Because the bill applies regardless of the type or age of the prior felony, it may raise procedural questions related to how prior convictions are validated and challenged. This could result in more frequent litigation at sentencing regarding the applicability of prior records, particularly in cases involving out-of-state or older convictions. Although the bill does not amend habitual offender sentencing under Section 31-18-17 NMSA 1978, which already imposes mandatory sentence enhancements in certain cases involving prior felonies, HB73 introduces an additional sentencing constraint that may intersect with or duplicate these provisions. Unlike habitual sentencing enhancements, which permit limited judicial departure under specified findings, HB73 contains no provision for individualized departure once the statutory criteria are met, potentially leading to overlaps or inconsistencies in application.

Legal precedent in New Mexico has consistently emphasized judicial discretion in sentencing as a core feature of the state's criminal justice approach, allowing courts to consider the totality of the circumstances in each case. Shifting that discretion through categorical sentencing limits may affect judicial workload, plea negotiations, and consistency across judicial districts. While the policy rationale for HB73 centers on recidivism, its uniform application to all repeat felony offenders, regardless of the nature or severity of the prior offense, could lead to uniform sentencing outcomes across dissimilar cases. This may, in turn, affect broader goals of proportionality and individualized justice in sentencing practices.

## OTHER SUBSTANTIVE ISSUES

While HB73 does not alter the statutory definitions of crimes or sentencing ranges, the proposed limitation on suspended and deferred sentencing authority may indirectly influence outcomes in cases where the presence of a prior felony is disputed or unclear. In such cases, courts and counsel may need to allocate additional time and resources to verify the existence, validity, and applicability of prior convictions, including those from other jurisdictions. This may increase the

complexity of certain sentencing hearings even if the underlying adjudication is straightforward.

In addition, HB73 may have intersecting effects with the state's existing habitual offender statute (Section 31-18-17 NMSA 1978), which already imposes mandatory sentence enhancements based on prior felony convictions. While both statutes are designed to address recidivism, HB73 introduces a separate procedural layer related to sentence execution rather than sentence length. Because habitual offender enhancements are not deferrable or suspendable unless the court makes specific findings in cases involving nonviolent offenses, HB73 may functionally duplicate that constraint in some cases while applying more broadly in others. This creates the possibility of dual restrictions—enhanced sentence length and reduced discretion over suspension—for defendants with qualifying prior convictions. The cumulative effect may lead to longer incarceration periods even for cases that do not qualify under the habitual sentencing framework.

The bill's uniform standard, which applies the two-thirds suspension cap to any prior felony regardless of its age, severity, or relationship to the current offense, may also result in sentencing outcomes that do not distinguish between types of recidivism. While this uniformity simplifies statutory application, it may also constrain judicial flexibility in cases where the prior offense was nonviolent, remote in time, or otherwise less indicative of risk. These structural features of the bill may lead to broader systemic shifts in plea negotiations, sentencing patterns, and correctional population profiles over time, particularly if courts and practitioners adjust their case strategies in anticipation of reduced discretion in sentencing options.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB73 relates to House Bill 74, as both propose changes to Section 31-18-17 NMSA 1978 governing habitual offender sentencing enhancements and would expand the circumstances under which prior felony convictions can trigger enhanced penalties.

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