

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		At least \$1 million	At least \$1 million	at least \$2 million	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

Synopsis: HB 73 proposes to amend Section 31-20-3 to limit sentencing courts' discretion when imposing a sentence for a second- or third-degree felony when the defendant was previously convicted of any felony. The bill provides that the court may defer or suspend no more than two thirds of the basic sentence for that second- or third-degree offense. The bill also proposes minor grammatical changes to the existing provisions.

FISCAL IMPLICATIONS

Because this bill would make the sentencing court's broad discretion dependent on whether the defendant has a prior felony conviction, there will undoubtedly be debate about useable, valid prior felonies. The bill could create additional work with respect to disputing the validity of prior convictions.

Passage of this bill would also result in a significant increase in felony jury trials because mandatory incarceration would reduce the incentive for many defendants to enter a plea.

In December 2025, LFC published *Policy Spotlight: Felony Arrests and Outcomes* which states that, between FY21-FY25, 63% of people are accused of a single felony meaning 37% (25,311 people) had 2 or more felony charges within the 5 year timespan, about 5,062 people per year.

LOPD's 2022 Workload Study (available on the LOPD website) shows the estimated amount of time spent in court for a crime against a person is 3.5 hours for a plea and 40 hours for a trial, a difference of 36.5 hours.

PD2 level attorneys do not handle felony cases. The agency cost of an LOPD "PD3" mid-level Associate Trial Attorney's mid-point salary including benefits is \$136,321.97 in Albuquerque/Santa Fe and \$144,811.26 in the outlying areas (due to salary differential required to maintain qualified employees). An LOPD "PD4" higher level (non-supervisor) Associate Trial Attorney's mid-point salary including benefits is \$149,063.16 in Albuquerque/Santa Fe and \$157,552.44 in the outlying areas. Recurring statewide operational costs per attorney would be \$13,212 with start-up costs of \$5,210. Additionally, average agency salary and benefits, plus recurring operational costs (but excluding start-up costs) for investigators is \$107,613.51 and for social workers, \$116,697.78.

Assuming the 5,062 people identified above only pick up one felony charge per year and using

costs of the additional time spent court plus the time of an attorney (analyst used Albuquerque/Santa Fe attorney costs for this analysis), LOPD could see an annual additional cost of almost \$10 million per year. The costs of paying attorneys in outlying areas is higher.

If only 10% of these cases went to trial and the remainder plead, the annual costs to LOPD are estimated to be \$1 million per year.

This bill would also increase the number of people incarcerated throughout the state; the New Mexico Sentencing Commission estimates the average daily cost per person is \$153 per day.

SIGNIFICANT ISSUES

It is a long-standing tradition in New Mexico law that “[a] trial court has broad discretion to suspend or defer all or any part of a noncapital sentence.” *State v. Mares*, 1994-NMSC-123, ¶ 10, 119 N.M. 48, 888 P.2d 930. *See also State v. Sanchez*, 2981-NMSC-032, ¶ 13, 97 N.M. 521, 641 P.2d 1068 (“since the defendant was not convicted of a capital or first degree felony, the trial court has the authority to defer or suspend the sentence under Section 31-20-3[.]”); *State v. Sosa*, 1996-NMSC-057, ¶ 11, 122 N.M. 446, 926 P.2d 299 (“[A] suspended sentence is a matter of judicial clemency.”). “Except where specifically prohibited by statute, *see, e.g.* NMSA 1978, § 31-18-17 (Cum.Supp.1983) (habitual offender enhancements may not be suspended or deferred), the sentencing judge is afforded broad discretion in fashioning sentences appropriate to the offense and the offender.” *State v. Sinyard*, 1983-NMCA-150, ¶ 7, 100 N.M. 694, 675 P.2d 426. Flexibility to fashion sentences on a case-by-case basis allows trial courts to exercise judicial clemency and tailor punishments according to the best interests of both defendants and the community.

On the other hand, because this bill would only apply to defendants who have a prior felony conviction, the vast majority will also already be subject to Habitual Offender Enhancements to the existing basic sentence, which involve a one, four, or eight-year enhancement depending on the number of prior felony cases. NMSA 1978, § 31-18-17 (2003). These enhancements “shall not be suspended or deferred, unless the court makes a specific finding that the prior felony conviction and the instant felony conviction are both for nonviolent felony offenses and that justice will not be served by imposing a mandatory sentence of imprisonment and that there are substantial and compelling reasons, stated on the record, for departing from the sentence imposed pursuant to this subsection.” § 31-18-17(A). Thus, the apparent goal of this bill is duplicative of existing mandatory sentencing enhancements without permitting any individualized consideration of the particular crime or defendant’s circumstances.

PERFORMANCE IMPLICATIONS

See above

ADMINISTRATIVE IMPLICATIONS

None noted

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted

TECHNICAL ISSUES

Reviewer is unaware whether this legislation is germane under Art. IV, Section 5. It is not a budget bill, analyst is unaware if it has been drawn pursuant to a special message of the Governor, and it was not vetoed following the previous regular session.

OTHER SUBSTANTIVE ISSUES

None

ALTERNATIVES

None

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS

None