

LFC Requester:

Scott Sanchez

AGENCY BILL ANALYSIS - 2026 REGULAR SESSION**WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO****[AgencyAnalysis.nmlegis.gov](https://www.legis.nm.gov/AgencyAnalysis) and email to billanalysis@dfa.nm.gov****(Analysis must be uploaded as a PDF)****SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}***Date Prepared:** January 21, 2026*Check all that apply:***Bill Number:** HB 74Original ☒ Correction ☐Amendment ☐ Substitute ☐**Sponsor:** Andrea Reeb**Agency Name
and Code**Administrative Office of the
District Attorneys - #264**Short** Habitual Offender Statute of**Number:****Person Writing** M. Anne Kelly**Title:** Limitations**Phone:** 5052503302**Email** akelly@da.state.nm.us**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY26	FY27		

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY26	FY27	FY28		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(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:

Section 1 amends Section 31-18-17 entitled “Habitual Offenders – Alteration of Basic Sentence.” Subsection D is amended to remove the requirement that the prior felony conviction be less than ten years old to be usable for habitual offender enhancement.

The bill also changes references to “his” to the gender neutral “the habitual offender.”

FISCAL IMPLICATIONS

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

None for this agency.

SIGNIFICANT ISSUES

This bill would increase the number of prior felony convictions that could be used to enhance a person as a habitual offender by eliminating the temporal requirement that a conviction be less than ten years old. This will likely increase the number of persons found to be habitual offenders and any felony would qualify.

The New Mexico Supreme Court is currently considering a case in which the public defender is arguing that prosecutors have no discretion to hold habitual offender time in abeyance, as is commonly done in plea agreements. The case was submitted to the Court after oral argument in December 2025, and the decision may also affect the habitual offender legal landscape. *See State v. Marcial Romero*, S-1-SC-40337. The Court also ordered the parties to brief whether such a change should apply retroactively or only prospectively.

This bill contains no language regarding the effective date of the amendment or whether it is intended to apply retroactively or only prospectively. It might be advisable to include such language for clarity. *See e.g. State v. Ortega*, 2004-NMCA-080, ¶ 16, 135 N.M. 737 (holding that the 2002 amendment to Section 31-18-17 - which excluded a felony conviction from habitual offender consideration when ten years or more have passed between the current conviction and the completion of the sentence - did not apply to defendant’s sentence for a probation violation when the original sentence was imposed before the effective date of the amendment).

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None noted.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

From the Second Judicial DA's office:

Another consideration – if the ten-year limit stays – is to make it from the date of the incident rather than the date of the conviction. That way, a defendant cannot abscond or delay the case through competency claims until the ten-year limit is reached and the prior conviction is no longer useable.

Or consider having only serious violent offenses with no ten-year time limit rather than a low level felony such as possession of a controlled substance hanging over the head of the defendant for the rest of their life.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

n/a