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## FISCAL IMPACT REPORT

**BILL NUMBER:** House Bill 74

**SHORT TITLE:** Habitual Offender Statute of Limitations

**SPONSOR:** Reeb/Terrazas

**LAST ORIGINAL**  
**UPDATE:** \_\_\_\_\_ **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 73

### Sources of Information

LFC Files

#### Agency or Agencies Providing Analysis

Administrative Office of the Courts  
Administrative Office of the District Attorneys  
Law Offices of the Public Defender  
Sentencing Commission  
Corrections Department

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

Office of the Attorney General

## SUMMARY

### Synopsis of House Bill 74

House Bill 74 (HB74) proposes to amend Section 31-18-17, NMSA 1978 (the Habitual Offender Sentencing Enhancement Act), which governs the enhancement of basic felony sentences for individuals with prior felony convictions. Under current law, a defendant qualifies as a habitual offender if they have a prior felony conviction within 10 years of the current conviction, and that prior offense arose from a separate transaction or occurrence. This time restriction effectively limits the state's ability to use older felony convictions to seek sentencing enhancements. HB74

eliminates the 10-year limitation entirely, thereby allowing any prior felony conviction—regardless of the time elapsed—to be used to classify a defendant as a habitual offender and apply the statutory sentence enhancements.

HB74 makes this change by striking language that currently limits the use of prior felony convictions to those incurred within 10 years of the current offense. Specifically, it removes the temporal restriction from the definition of “prior felony conviction” in Section 31-18-17(B), NMSA 1978, thereby expanding the scope of prior offenses that qualify for enhancement. As a result, the proposed amendment would authorize prosecutors to seek increased penalties for individuals convicted of noncapital felonies in New Mexico even if their prior felony convictions occurred decades earlier. The sentencing enhancements remain consistent with existing law: one-, four-, or eight-year increases depending on the number of prior convictions. However, the pool of eligible individuals subject to enhancement is broadened by removing the statutory lookback period. This change may result in longer incarceration periods for certain individuals, increased prison populations, and broader discretion for prosecutors to seek enhanced sentences.

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 HB74 could have significant fiscal implications. HB74 seeks to amend Section 31-18-17 NMSA 1978 to remove the current 10-year limitation for counting prior felony convictions toward habitual offender sentencing enhancements. By allowing older convictions to qualify, the bill expands the pool of individuals eligible for enhancement and may result in more defendants being subject to enhanced sentencing and longer total sentence lengths across qualifying cases.

The Corrections Department reports the average cost to incarcerate an individual in FY25 was \$61.5 thousand. However, due to the fixed costs of maintaining prison infrastructure, the Legislative Finance Committee (LFC) estimates the marginal cost of incarceration, representing the cost of housing one additional inmate, is approximately \$27.2 thousand per year. The New Mexico Sentencing Commission notes that in FY24, habitual offender enhancements were applied in 812 convictions, adding an average of 2.1 years to each sentence. Removing the 10-year lookback window would likely increase this caseload over time, resulting in higher prison populations and long-term increases in correctional expenditures.

This bill is anticipated to increase both the number of incarcerated individuals and the time they remain incarcerated. Because longer sentences reduce the number of inmates released relative to those admitted, even a small increase in average sentence length can drive significant growth in the incarcerated population over time.

Other system costs beyond incarceration may also increase. The Law Offices of the Public Defender anticipates increased workloads from additional habitual enhancement proceedings, including evidentiary hearings that often involve litigation over the validity and admissibility of prior convictions. Older convictions, particularly from out-of-state jurisdictions, may require additional investigative resources to verify and litigate, increasing demand for staff and attorney time. Given the department’s current staffing shortfall—estimated at over 600 attorneys

statewide to meet constitutional workload standards—any expansion of mandatory sentencing proceedings may require increased appropriations to maintain compliance with Sixth Amendment requirements.

The Administrative Office of the Courts notes that expanded eligibility for habitual offender enhancement may lead more defendants to elect to proceed to trial rather than plead, given the greater potential for increased sentencing exposure. This shift could increase the court's workload, require additional courtroom time, and impose additional jury and administrative costs. While the immediate administrative burden is expected to be minimal, the cumulative effects of higher case complexity, longer trials, and increased litigation could have broader implications over time.

Although the bill does not contain direct appropriations, the anticipated increase in incarceration and engagement with the legal system is expected to raise long-term costs to the state's general fund. Quantifying the full fiscal impact will depend on prosecutorial discretion, sentencing patterns, and the volume of qualifying cases, but the trend toward longer incarceration periods without time limits on prior offenses will likely increase demand for corrections, indigent defense, and judicial system resources.

## **SIGNIFICANT ISSUES**

HB74 would modify a key eligibility requirement for habitual offender sentencing enhancements by removing the 10-year time limit that currently restricts which prior felony convictions may be used to trigger sentence increases under Section 31-18-17 NMSA 1978. While the bill does not alter the nature or severity of the enhancements themselves, expanding the eligible conviction window may affect how often prosecutors seek enhancements and how often defendants face the possibility of increased penalties for criminal histories that would otherwise fall outside the statute's reach.

The bill's proposed change comes amid broader national and state-level conversations about sentencing policy. In recent years, sentencing reforms across the country have generally moved toward narrowing habitual offender statutes, limiting enhancements for more serious or recent convictions, and emphasizing proportionality and judicial discretion. HB74 moves in the opposite direction by eliminating a temporal safeguard that has constrained when and how the habitual offender statute is applied. In doing so, the bill may increase the role of prosecutorial discretion in determining which prior offenses should trigger enhancements, particularly for individuals with older or nonviolent felony records.

Currently, sentencing judges retain discretion in applying a basic sentence, but are generally bound by the mandatory nature of habitual enhancements once the legal criteria are met. Removing the time limitation could reduce the practical weight of individualized circumstances in sentencing outcomes for repeat offenders, including those whose prior felonies occurred decades earlier. Moreover, HB74 does not differentiate between the severity or type of prior felony convictions, meaning that any qualifying felony, regardless of whether it was violent, nonviolent, or related to substance use, would remain eligible indefinitely.

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

HB74 relates to House Bill 73, 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.

## **TECHNICAL ISSUES**

The Administrative Office of the District Attorneys (AODA) notes that House Bill 74 does not specify whether the proposed amendment to Section 31-18-17 NMSA 1978 is intended to apply retroactively or only to convictions and sentencing proceedings occurring after the bill's effective date. The absence of clarifying language may lead to inconsistent application across jurisdictions and potential legal challenges. This concern arises in the context of prior case law, including *State v. Ortega*, 2004-NMCA-080, in which the Court of Appeals declined to apply an earlier amendment to the habitual offender statute retroactively, finding no express legislative intent. AODA's analysis suggests that including language clarifying the bill's temporal scope may help reduce ambiguity and improve consistency in enforcement.

## **OTHER SUBSTANTIVE ISSUES**

Several agency analyses note that HB74 may affect both prosecutorial and defense decision-making in plea negotiations. The expanded scope of eligibility for habitual enhancements could influence charging strategies, including whether prosecutors seek enhanced penalties more frequently in cases involving older convictions. Conversely, defense attorneys may approach such cases with increased caution, potentially leading to more contested hearings, longer case timelines, and fewer plea agreements. This shift may also affect pretrial dynamics, as defendants facing mandatory enhancements could have a stronger incentive to proceed to trial, particularly in cases involving older or out-of-state convictions where admissibility or documentation may be disputed.

Additionally, although HB74 does not change the types of felonies eligible for enhancement, the bill removes a filtering mechanism that previously excluded certain low-level or dated offenses from triggering additional incarceration time. Because the statute does not differentiate among felony types when applying enhancements, its expanded application may encompass a broader range of criminal histories, including those unrelated to the offense for which a defendant is currently charged. This may result in enhanced sentences being applied in cases where the relevance or severity of prior conduct varies significantly.

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