

LFC Requester: _____

**AGENCY BILL ANALYSIS
2025 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

AgencyAnalysis.nmlegis.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}

Check all that apply:

Original **Amendment** _____
Correction _____ **Substitute** _____

Date 1/21/2025
Bill No: HB 50-280

Sponsor: Cynthia Borrego
Penalties for Vehicle Thefts

Agency Name and Code Number: Law Offices of the Public Defender-280

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Short Title: _____

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	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: The Bill would consolidate applicable penalties for first and repeat offenders in four related Sections of Chapter 30, Article 16D NMSA (i.e., Unlawful Taking of a Motor Vehicle, 30-16D-1; Embezzlement of a Motor Vehicle, 30-16D-2; Fraudulently Obtaining a Motor Vehicle, 30-16-D3; and Receiving, or Transporting a Stolen Motor Vehicle, 30-16D-4). The Bill would remove now-identical penalty provisions from all four criminal statutes, and create a new subsection 30-16D-5, which would provide one uniform penalty range that would apply interchangeably to repeat offenders of any of the offenses defined in Subsections 1 through 4. In other words, a **first** time violator of the one statute would be considered a repeat offender of the larger statutory scheme if they have a prior conviction for a different Article 16D offense.

The penalties would be as follows:

- A. fourth degree felony for a first offense; B. third degree felony for a second offense, regardless of which provision was the first offense; and C. second degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

FISCAL IMPLICATIONS

Increased penalties result in more accused persons opting to take their cases to trial. Preparing cases for trial must be handled by senior-level felony Public Defender attorneys (Trial Attorneys). Depending on the volume of charges initiated by a given district attorney in a locale, there may be a recurring increase in needed LOPD FTEs for the office as well as a need for funds for contract counsel compensation. The bill would likely lead to an increase in prosecutions for third and second-degree felonies, the latter carrying up to 9 years in prison. This makes trial more likely and requires the assistance of more experienced defense counsel.

The LOPD cost for experienced defense attorneys, including salary, benefits, operational costs, and support staff is \$291,144.66 annually. Barring some other way to reduce indigent defense workload, any increase in the number of felony prosecutions would bring a concomitant need for an increase in indigent defense funding in order to keep this problem from spreading. Of course accurate prediction of the fiscal impact would be impossible to speculate; assessment of the required resources would be necessary after the implementation of the proposed statutory scheme.

SIGNIFICANT ISSUES

The Bill would penalize offenders under any of the four subsections as repeat offenders if they had previously violated **any** of the four subsections. The four subsections apply to different acts in furtherance of theft of or possession of a stolen motor vehicle. This may lead to further litigation since an accused person may challenge the legality of an enhanced punishment for “repeating” conduct they have not actually repeated.

This bill may have the unintended consequence of *preventing* use of prior convictions from the other statutes for habitual offender enhancements. Without the internal increase in felony level, prior convictions under the other statutes are already (currently) useable prior felonies for purposes of the Habitual Offender Act (which increases penalties by 1, 4, or 8 years of mandatory incarceration depending on the number of priors). *See* NMSA 1978, § 31-18-17. However, if a prior felony is used to increase the *degree* of felony under an “internal enhancement” like the one proposed by HB 50, that prior conviction may not also be used as a prior felony under Section 31-18-17. *See State v. Lacey*, 2002-NMCA-032, 131 N.M. 684, 41 P.3d 952 (double jeopardy barred use of prior trafficking conviction to enhance subsequent offense under the trafficking statute, and then also enhance his sentence under the habitual offender statute).

PERFORMANCE IMPLICATIONS

A recent workload study by an independent organization and the American Bar Association concluded that New Mexico faces a critical shortage of public defense attorneys. The study concluded, “A very conservative analysis shows that based on average annual caseload, the state needs an additional 602 full-time attorneys – more than twice its current level - to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment.”

https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l-s-claid-moss-adams-nm-proj.pdf

While the LOPD would likely be able to absorb some cases under the proposed law, if more higher-penalty trials result from enactment, LOPD may need to hire more trial attorneys with greater experience to address these additional trials and ensure compliance with constitutional mandates of effective assistance of counsel. (Additionally, courts, DAs, AGs, and NMCD could anticipate increased costs.) Assessment would be necessary after the implementation of the proposed higher-penalty scheme.

ADMINISTRATIVE IMPLICATIONS

See Performance Implications.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None known.

TECHNICAL ISSUES

None known.

OTHER SUBSTANTIVE ISSUES

None known.

ALTERNATIVES

The status quo.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

All of these offenses would remain fourth-degree felonies for first offenses; an accused person could only be subject to a “repeat offender” enhanced penalty if their current conduct was of the same type as their prior case, but would continue to be subject to Habitual Offender enhancements for priors from the other statutes.

AMENDMENTS

None known.