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## FISCAL IMPACT REPORT

**LAST UPDATED** \_\_\_\_\_  
**ORIGINAL DATE** 1/29/2025

**SPONSOR** Borrego

**BILL**  
**NUMBER** House Bill 50

**SHORT TITLE** Penalties for Vehicle Thefts

**ANALYST** Tolman

### 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 \$864.9	At least \$2,330.7	At least \$3,195.6	Recurring	General Fund
LOPD	At least \$291.0	At least \$291.0	At least \$291.0	At least \$873.0	Recurring	General Fund
Total	At least \$291.0	At least \$1,115.9	At least \$2,621.7	At least \$4,028.6	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.  
\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Administrative Office of the Courts (AOC)  
Administrative Office of the District Attorneys (AODA)  
Law Offices of the Public Defender (LOPD)  
New Mexico Attorney General (NMAG)  
New Mexico Sentencing Commission (NMSC)  
Office of Superintendent of Insurance (OSI)  
Parole Board (NMPB)

## SUMMARY

### Synopsis of House Bill 50

House Bill 50 (HB50) proposes enhanced penalties for the crimes of unlawful taking of a motor vehicle (Section 30-16D-1 NMSA 1978), embezzlement of a vehicle or taking of a motor vehicle (Section 30-16D-2 NMSA 1978), fraudulently obtaining a vehicle or taking of a motor vehicle (Section 30-16D-3 NMSA 1978), and receiving or transferring stolen vehicles or taking of motor vehicles (Section 30-16D-4 NMSA 1978).

Under the revised penalties, anyone convicted for these crimes could be guilty of a fourth-degree felony for a first offense, a third-degree felony for a second offense, regardless of which provision was the first offense, and a second-degree felony for a third or subsequent offense, regardless of which provision was the first or second offense.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

## FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. The New Mexico Corrections Department (NMCD) reports that the average cost to incarcerate a single inmate in FY24 was \$56.2 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$28.2 thousand per year across all facilities. HB50 is anticipated to increase the amount of time individuals spend incarcerated in New Mexico's prison system.

The changes proposed by HB50 would only have an impact when an individual who would otherwise have been subject to a fourth-degree felony penalty (no previous convictions for the current charge) is instead subject to a third-degree felony penalty (one previous conviction for one of the charges other than the current charge) or second-degree felony penalty (two or more previous convictions for one or more of the charges other than the current charge), or when an individual who would otherwise have been subject to a third-degree felony penalty (one previous conviction for the current charge) is instead subject to a second-degree felony penalty (one previous conviction for the current charge and one or more previous convictions for one or more of the charges other than the current charge).

The New Mexico Sentencing Commission (NMSC) reports that since FY23, 709 unique individuals were charged with any 30-16D violations and that 115 (16.2 percent) had multiple dispositions for 30-16D. In other words, these are the repeat offenders for motor vehicle theft crimes that HB50 would be targeting. Of those 115, 52 had different statutes within their priors and would be hypothetically sentenced differently under the provisions of HB50. Of those 52 individuals, 30 would be charged with a third-degree felony instead of a fourth-degree felony and 22 would be charged with a second-degree felony instead of a fourth or third-degree felony. Based on estimates of actual time served provided by NMSC, the average length of stay for individuals who commit a fourth-degree felony is 1.41 years, 2.50 years for a third-degree felony, and 3.98 years for a second-degree felony. Because these changes effectively increase the penalties for existing crimes for which individuals would have otherwise served shorter terms in prison, these additional costs will not be felt until those individuals would have otherwise been released, which this analysis estimates would be in FY27 and these costs are projected to increase until FY29. Therefore, increasing penalties for the likely population (30 individuals annually) from a fourth to a third-degree felony could cost \$499 thousand dollars in FY27, \$1,345 thousand dollars in FY28, and \$1,550 thousand dollars in FY29. Increasing penalties for the likely population (22 individuals annually) from a fourth to a second-degree felony could cost \$366 thousand dollars in FY27, \$986 thousand dollars in FY28, \$1,606 thousand dollars in FY29, \$2,226 thousand dollars in FY30, and \$2,468 thousand dollars in FY31.

Both the Administrative Office of the Courts (AOC) and Law Office of the Public Defender (LOPD) noted that HB50 effectively increases penalties, which is likely to result in more defendants invoking their right to trials, which will require additional judge time, courtroom staff

time, courtroom availability and jury fees. Trial cases handled by the LOPD require senior-level attorneys. Depending on the increase in number of charges and resulting trials, there may be a recurring increase in needed LOPD FTEs. For an increase of at least a single experienced trial attorney, the LOPD estimates the potential recurring cost to be \$291 thousand annually, which includes salary, benefits, operational costs, and support staff.

Additional increased system costs beyond incarceration, such as costs to the judicial branch for increased trials or to law enforcement to investigate and arrest individuals for the new crimes under HB50, are not included in this analysis, but could be moderate.

This bill effectively increases sentences for acts that are already criminalized. This analysis does not include potential benefits of crime deterrence due to increased punishment because research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

## SIGNIFICANT ISSUES

HB491 effectively increases sentences for existing crimes. Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment. As a result, increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful to community safety. In New Mexico, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC's evaluation team previously reported that neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime in the 2nd Judicial District (Bernalillo County), and when felonies rose accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime.

The Office of Superintendent of Insurance (OSI) notes that New Mexico has ranked in the top ten for motor vehicle thefts for nearly a decade, and among the top five for most of the last five years. Albuquerque was ranked the highest in the nation for motor vehicle thefts from 2016 to 2018. LFC's evaluation team recently reported in an *Update on Crime in New Mexico and Bernalillo County* that, "In 2022, the most recent year of comparable national data, motor vehicle theft reached 1,050 per 100 thousand residents, which exceeded comparable metropolitan areas, including Salt Lake City, Oklahoma City, Colorado Springs, Tucson, and El Paso." In 2024, Las Cruces, Farmington, and Santa Fe joined Albuquerque in the top 50 ranking of most motor vehicle thefts. In 2024, there were 4,406 cars stolen in Albuquerque, which was a seven percent decrease from the prior year and ranks the city seventh nationally for motor vehicle theft. OSI also notes that motor-vehicle-theft-related crimes are often committed by repeat offenders.

LOPD notes that the bill could:

- 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 HB50, 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.”

LOPD notes that they could likely absorb some cases under the proposed law; however, if more penalty trials result from enactment of this bill, LOPD would likely need to hire more trial attorneys with greater experience to address the additional trials and ensure compliance with constitutional mandates of effective assistance of counsel. LOPD points out that a recent workload study conducted by the American Bar Association found that New Mexico faces a critical shortage of public defense attorneys and that the state needs an additional 602 full-time attorneys, or more than twice its current level, to comply with standards of reasonably effective assistance of counsel. LOPD notes that district attorneys could anticipate similar increased costs.

OSI similarly notes that Section 31-18-17 NMSA 1978 already allows for sentencing enhancements for habitual offenders and HB50 is unclear as to whether the penalties are meant to be in addition or an alternative to currently available sentencing enhancements. OSI suggests that if HB50 is not meant to be an alternative to existing sentencing enhancements, an amendment is needed. Otherwise, the presumption is that this bill would apply alongside Section 31-18-17 NMSA 1978.

OSI also notes that HB50 is unclear as to whether the sentencing enhancement can apply to offenses that occur during the same transaction or incident, or whether the offenses must occur during separate incidents. OSI suggests that if the bill is not meant to apply to charges that arose under the same transaction or incidents, an amendment would be needed to clarify that this only applies to circumstances that arose under separate transactions or incidents.

## **PERFORMANCE IMPLICATIONS**

AOC notes that SB70 could impact performance-based budgeting by the agency if the bill has an impact on cases disposed of as a percent of cases filed and percent change in case filings by case type.

## **TECHNICAL ISSUES**

The New Mexico Attorney General (NMAG) suggests that for purposes of clarity, the proposed new material should be renumbered, citing, “The new material is presented under ‘Section 5’ as Section 30-16D-5.1. Section 30-16D-5 is Injuring or Tampering with a Motor Vehicle, Section 30-16D-6 is Altering or Changing Engine or Other Numbers and Section 30-16D-7 is Operating a Chop Shop; Penalty. The proposed new material could potentially be added as Section 30-16D-5, and Sections 30-16D-5 to 30-16D-7 could be renumbered to Sections 30-16D-6 to 30-16D-8, respectively, or the proposed new material could potentially be added as Section 30-16D-8.”

NMAG also notes that certain language has been omitted from the bill; certain references to “[Chapter 66, Articles 1 to 8 NMSA 1978]” are not included, as provided below:

In the bill, Section 30-16D-1 states, “Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code intentionally and without consent of the owner.” The statute currently states, “Unlawful taking of a vehicle or motor vehicle consists of a person taking any vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] intentionally and without consent of the owner.”

In the bill, Section 30-16D-2 states, “Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code, with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.” The statute currently states, “Embezzlement of a vehicle or motor vehicle consists of a person embezzling or converting to the person's own use a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978], with which the person has been entrusted, with the fraudulent intent to deprive the owner of the vehicle or motor vehicle.”

In the bill, Section 30-16D-3 states, “Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code that belongs to another person by means of fraudulent conduct, practices or representations.” The statute currently states, “Fraudulently obtaining a vehicle or motor vehicle consists of a person intentionally misappropriating or taking a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] that belongs to another person by means of fraudulent conduct, practices or representations.”

Finally, in the bill, Section 30-16D-4 states, “Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken.” The statute currently states, “Receiving or transferring a stolen vehicle or motor vehicle consists of a person who, with intent to procure or pass title to a vehicle or motor vehicle as defined by the Motor Vehicle Code [Chapter 66, Articles 1 to 8 NMSA 1978] that the person knows or has reason to believe has been stolen or unlawfully taken, receives or transfers possession of the vehicle or motor vehicle from or to another or who has in the person's possession any vehicle that the person knows or has reason to believe has been stolen or unlawfully taken.”