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## FISCAL IMPACT REPORT

ORIGINAL DATE 1/18/17

SPONSOR Rehm LAST UPDATED \_\_\_\_\_ HB 21

SHORT TITLE 25 -Year- Old Convictions as Habitual Offenders SB \_\_\_\_\_

ANALYST Downs

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	Minimal	Minimal	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Bernalillo County Metropolitan Court (BCMC)  
 Attorney General’s Office (AGO)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

House Bill 21 amends Section 31-18-17(D) NMSA 1978, governing habitual offenders and the alteration of a basic sentence, to increase the time period for inclusion of a conviction triggering sentence enhancement within the definition of “prior felony conviction” from less than 10 years to less than 25 years, with an effective date of July 1, 2017. House Bill 21 also requires felony DWI convictions (less than twenty five years old) be included as prior felony convictions when enhancing the basic sentences of habitual offenders. To constitute a felony DWI, the offender has to have four or more DWI convictions.

### FISCAL IMPLICATIONS

According to AOC, any time penalties become more severe defendants are more likely to invoke their rights to trial and trial by jury. The Jury and Witness fund is experiencing a \$600 thousand shortfall for the current fiscal year has almost a \$1 million deficit for FY16. AOC stated it cannot quantify the costs of increased jury trials under House Bill 21. Additionally, AOC stated that enhanced sentences can cause defendants to retain their counsel longer, incurring costs to the Public Defender Department.

AOC also reported there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions, and appeals from convictions. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional personnel and resources to handle the increase.

NMCD stated it is difficult to estimate how many additional offenders would have to serve habitual sentence enhancements under the provisions of this bill. House bill 21 could result in a minimal to moderate increase in NMCD's prison population. NMCD reported the average annual cost per inmate is \$44.8 thousand. The daily average cost per inmate is \$83.22.

## **SIGNIFICANT ISSUES**

According to AOC, sentencing reform nationwide has been trending toward enactment of laws and other measures that create or expand opportunities to divert people away from the criminal justice system, reduce prison populations, and support successful reentry into communities. Additionally, the trend has been to reserve sentence enhancement application for the most serious crimes by the most serious offenders. House Bill 21, by including convictions going back 25 years within the definition of "prior felony conviction," triggering habitual offender sentence enhancements without placing further limitations upon the type of older prior felony convictions, appears to run counter to the recent nationwide trends.

The AGO stated that it might be difficult to obtain the necessary paperwork on convictions as old as 25 years. The burden is on the State to prove the validity of prior convictions by proving the defendant is the same person, the defendant has been convicted of the prior felony, and fewer than ten years have passed since the defendant completed serving his or her sentence, probation or parole for the conviction.

Enhanced sentences over time will increase the population of New Mexico's prisons and long-term costs to the general fund. An increased length of stay would increase the cost to house the offender in prison. In addition, sentencing enhancements could contribute to overall population growth as increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. NMCD's general fund base budget has grown by an average \$9.5 million per year, or 3 percent, since FY14 as a result of growing prison population and inmate's needs.

Societal benefits, particularly to potential victims, would also accrue through enhanced sentences if they reduce or delay re-offenses. LFC cost-benefit analysis of criminal justice interventions shows that avoiding victimization results in tangible benefits over a lifetime for all types of crime and higher amounts for serious violent offenses. These include tangible victim costs, such as health care expenses, property damage, losses in future earnings and intangible victim costs such as jury awards for pain, suffering, and lost quality of life.