

LFC Requester: \_\_\_\_\_

AGENCY BILL ANALYSIS  
2017REGULAR SESSION

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**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 Jan. 10, 2017

Bill No: HB 21

Sponsor: William "Bill" Rehm

Agency Code: 264

Short 25 Year-Old Convictions As

Person Writing Gary Cade

Title: Habitual Offenders

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		

(Parenthesis ( ) Indicate Expenditure Decreases)

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

	<b>FY17</b>	<b>FY18</b>	<b>FY19</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(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: HB-21 would expand to 25 years the time limit permitted between incarceration or completion of probation or parole for prior felony convictions used to enhance the sentences convicted of subsequent felony crimes and meeting the definition of habitual offenders. Under current law prior convictions cannot be used to enhance the sentences if more than ten years have elapsed since the offender completed the incarceration or parole or probation imposed for their prior felony conviction(s). The bill would also delete felony DWI's as prior felonies that could be used to enhance punishments for being a habitual offender, and would make minor grammatical changes so that the statute would be gender neutral.

**FISCAL IMPLICATIONS**

Unknown, although it seems likely that more than doubling the period someone could be charged as a habitual offender may result in more people being incarcerated. That could result in more litigation because of offenders resisting the risk of longer periods of incarceration. If so additional personnel and financial resources for the courts, prosecutors, defenders and corrections department will probably be needed.

**SIGNIFICANT ISSUES**

HB-21 would increase to 25 years the current limit in the habitual offender statute that a defendant's sentence may not be enhanced if ten years have passed "...since the person completed serving his sentence, or period of probation or parole for the prior felony, whichever is later." (See, Sec. 31-18-17((D)(1)-(2), NMSA). See also, *State v. Shay*, 2004-NMCA-077, Cf., *State v. Simmons*, 2006-NMSC-040 (Required elements for enhancement of a defendant's sentence are: (1) defendant must be the same person; (2) defendant must have been convicted of the prior felony; and (3) less than ten years have passed since the defendant completed serving their sentence, probation or parole for the conviction.) Proving prior felony convictions that may be up to 25 years old (or older at the time of the habitual offender hearing) can be challenging, especially if files were not retained or are not otherwise available after two or even three decades. It is also likely that persons will contest the habitual offender charges if they have not been involved in the criminal justice system for a long time. More litigation will very likely require more personnel and financial resources for the courts, prosecutors and defenders. Some persons charged under the bill will, by necessity, be older defendants and if they are convicted will result in older prison inmates which could create certain problems for the Department of Corrections.

The bill would also delete felony DWI convictions which are now included as felony convictions subject to the habitual offender sentence enhancements. Presumably that change in the statute would be to avoid complications resulting from persons getting successive felony convictions for DWI, some of which might also be used to enhance their sentence because they could be also be considered a habitual offender. See, Sect. 66-8-102(G)—(K), NMSA 1978. Cf., *State v. Anaya*, 1997-NMSC-010 and *State v. Begay*, 2001-NMSC-002. (DWI convictions are not subject to enhancement under both the felony DWI and the habitual offender statutes.) HB-21 would leave unchanged the vehicular homicide statute that persons convicted would have their sentence enhanced by four years for each prior DWI conviction within ten years of the occurrence for which they were sentenced.

The mandatory sentence enhancements of one, four and eight years that are required now for persons with usable prior felonies respectively, even if they are for non-violent crimes, would be unchanged if they meet the required crime-conviction sequence. Cf., *State v. Linam*, 93 N.M. 3007, 600 P.2d 253 (1979). (Each felony must have been committed after conviction for the preceding felony used to enhance the sentence.)

HB-21 would also make minor grammatical changes to make the habitual offender statute gender neutral.

## **ADMINISTRATIVE IMPLICATIONS**

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

## **TECHNICAL ISSUES**

## **OTHER SUBSTANTIVE ISSUES**

## **ALTERNATIVES**

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**