

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

AGENCY BILL ANALYSIS  
2017 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

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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. 15, 2016  
Bill No: HB 74

Sponsor: Jim Dines  
Short Sentencing of Felony DWI's  
Title: \_\_\_\_\_

Agency Code: 264  
Person Writing Gary Cade  
Phone: 505-507-7752 Email cadeabq@gmail.com

**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
FY15	FY16	FY17		

(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 74 is identical to HB 82 introduced in 2016 and HB 570 in 2015, both of which were introduced by Rep. Dines. It would amend the habitual offender statute to include any non-capital felony conviction, and would specifically include felony driving while intoxicated (“DWI”) convictions, that could be considered as a prior felony conviction to determine if someone is a habitual offender. The current habitual offender law includes only non-capital felonies in the Criminal Code and Controlled Substance Act. It also provides that a prior DWI conviction “...that is used to enhance the punishment for (DWI) shall also be used as the basis for enhancement of the offender’s sentence” as a habitual offender.

#### **FISCAL IMPLICATIONS**

Unknown. It seems likely that more persons who are charged with a DWI felony and have one or more prior felony convictions will litigate the case and go to trial instead of risking the increased incarceration period for being a habitual offender. More personal and financial resources will be needed for the courts, district attorneys, defenders and—ultimately corrections department, to cope with the increased workloads.

#### **SIGNIFICANT ISSUES**

HB 74 will close a gap in the habitual offender statute that has allowed persons with felony DWI convictions to avoid those felony convictions being used to enhance their sentences if they are otherwise qualified as habitual offenders. A person convicted of felony DWI now cannot be sentenced as a habitual offender unless the legislature has not expressed a clear intent to include felony DWI among the offenses applicable to habitual offender proceedings. See, State v. Anaya, 1997—NMCA—010. Although the bill expressly includes “...a conviction pursuant to Section 66-8-102 NMSA 1978” (the DWI statute), presumably persons convicted of vehicular homicide or great bodily injury by vehicle could also have their sentences enhanced as habitual offenders if they have the other predicate felony convictions required by statute since the bill would cover any “non-capital felony.” Since it is not limited to any particular codification of felony offenses, a wide variety of other crimes could serve as predicate felonies for sentence enhancements as habitual offenders. The usable felony convictions could range from crimes as diverse as election malfeasance to violations of environmental standards. See, e.g., Sect. 1-20-9, NMSA 1978 (Falsifying election documents.), Sect. 1-20-14 and Sect. 3-8-76, NMSA 1978 (Intimidation of voters or election officials) and Sect. 74-6-10.2, NMSA 1978 (Violating water quality requirements.)

HB 74 expressly states that a prior DWI conviction "...that is used to enhance the punishment for driving under the influence of intoxicating liquor or drugs shall also be used as the basis for the enhancement of the offender's sentence" under the habitual offender statute. Ordinarily the State is forbidden from using a single conviction to both fulfill an essential element of a crime and then again to enhance a defendant's sentence under the habitual offender statute, i.e., it could not use the defendant's prior felony conviction to prove the defendant was a felon in possession of a firearm, and then use the same felony conviction to enhance his sentence as a habitual offender. See, State v. Haddenham, 110 N.M. 149 (1990). "Such duplication offends double jeopardy unless the Legislature has clearly expressed its intent otherwise." See, State v. May, 2010—NMCA—071. (Emphasis added.) If a felony DWI conviction is only one of the felony convictions used to prove someone is a habitual offender there should be no issue. Defendants may claim that if two or more of the felony convictions used to prove they are a habitual offender are based on prior DWI's, the State should have to elect between using prior convictions to have the offense punished as a fourth, fifth, sixth, or seventh or subsequent, conviction (each of which has different penalties) and whether to utilize one, or more, of the prior DWI convictions to enhance the defendant's sentence as a habitual offender. By its clear language this bill should permit a defendant's prior DWI convictions to support making the offense a fourth degree or third degree felony, and to also use the conviction(s) to support enhancement of the sentence as a habitual offender.

In 2015 the Administrative Office of the Courts ("AOC") raised concerns that if the bill becomes law there will be two separate sections that impose mandatory minimum sentences and increased sanctions for subsequent felony convictions for DWI that could result in a double jeopardy challenge on whether the increased sanctions can also be accumulated with habitual offender sanctions.

## **PERFORMANCE IMPLICATIONS**

## **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**