

LFC Requester: _____

AGENCY BILL ANALYSIS
2016 REGULAR SESSION

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{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. 5, 2016
Bill No: HB 035

Sponsor: William "Bill" Rehm
Short Habitual Offender
Title: Sentencing Changes

Agency Code: 264
Person Writing Gary Cade
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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY16	FY18	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: HB-35 would eliminate the current option for district judges to suspend or defer the habitual offender sentence enhancement of one year for non-violent offenders. The bill would also eliminate the current limit of ten years between incarceration or completion of probation or parole for prior felony convictions used to enhance the sentences of habitual offenders. The bill would also make minor grammatical changes so that the statute would be gender neutral.

FISCAL IMPLICATIONS

Unknown.

SIGNIFICANT ISSUES

Currently, a judge who makes a specific finding, on the record, that “justice will not be served” by imposing mandatory imprisonment is granted discretion to not impose the one-year enhancement for offenders if both the current and predicate felonies were “non-violent,” i.e. did not involve application of force or threatened use of force or a deadly weapon. HB-35 would remove that discretionary option from district court judges and require imposition of the one-year sentence enhancement for non-violent felonies resulting in habitual offender prosecutions and require mandatory incarceration, just like is required now for persons where the predicate conviction and/or current conviction were for a violent felony. The mandatory sentence enhancements of four and eight years that are required now for persons with two or three 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.) The definition in the current statute defining “non-violent felony offense” would be deleted since all felony convictions would be covered by the habitual offender sentence enhancement requirements.

HB-35 would also repeal the 2002 amendment to the habitual offender statute that a defendant’s sentence may not be enhanced unless than ten years have passed “since the person committed serving his sentence, or period of probation or parole for the prior felony, whichever is later.” 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.)

HB-35 would also make a couple of minor grammatical changes to delete designation of defendants as male and would 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