

Bill Analysis 2021 Regular Session**SPONSOR:** Representative Micaela Lara Cadena**SHORT TITLE:** Habitual Offender Judicial Flexibility

SYNOPSIS OF BILL: HB 114 would remove simple (user-level) drug possession from the Habitual Offender Act so that possession felonies could not be enhanced or used to enhance other felonies. It would also give judges the discretion whether to impose enhancement time, in whole or in part, and to suspend an enhancement it imposes. It would maintain the current enhancement periods of 1, 4, and 8 years for one, two, or three or more prior felonies.

STRENGTHS: Judges are in the best position to determine whether a habitual offender enhancement is appropriate under the facts of a particular case. HB 114 would retain judges' ability to impose the maximum enhancement term for repeat offenders but would no longer obligate them to impose the maximum enhancement term if the judge does not believe it is necessary or just. It also provides judges with a middle ground of adding enhancement time with the option of suspending that time to give an individual the opportunity to succeed on probation.

Removing simple possession from the Habitual Offender Act is a step in the right direction toward treating substance-use disorder as a public health issue, rather than an issue of criminal punishment. The reduction of prisoners serving mandatory enhancement time for substance possession is likely to have a significant positive impact on Corrections and all relevant aspects of the criminal legal system.ⁱ

WEAKNESSES: The bill leaves some issues unaddressed. Under NMSA 1978, Sections 31-18-18 and -19, prosecutors still have no discretion in filing charges to invoke habitual offender enhancements. Giving prosecutors similar discretion would reduce the number of unnecessary proceedings in which judges are required to exercise discretion *not* to impose enhancements, even where all parties agree it would be inappropriate.

Additionally, New Mexico retains a number of mandatory sentences, including the 18-year sentence for first-degree felonies, which are not limited to violent crimes. Thus, while HB 114 is a great stride toward reducing mandatory sentencing, there is more to do.

<u>Safer</u>	<u>Apolitical</u>	<u>Fiscally-Responsible</u>	<u>Evidence Based</u>	<u>Grade</u>
<p>This bill does not affect the basic sentence for any offense and leaves judges the ability to impose the sentence available under current law when it would further interests in public safety.</p> <p>However, it could prevent wasteful over-incarceration that does not target dangerous individuals.</p>	<p>HB 114 returns the discretion to elected judges to decide the appropriate sentence in individual cases. Both sides of the aisle can agree that mandatory enhancements are ineffective.ⁱⁱ</p>	<p>At between \$30,000 and \$45,000 per year per inmate, HB 114 could save \$320,000 on a single 8-year enhancement. With the potential to do so on multiple counts per case, the bill could result in a significant <u>reduction</u> to the Corrections budget.ⁱⁱⁱ</p>	<p>The evidence shows that mandatory sentencing does not deter or reduce crime and can actually make communities <i>less</i> safe because recidivism rates are higher for individuals who have served lengthy prison sentences.^{iv}</p>	<h1>A</h1>

www.nmsafe.org

ⁱ See Rob Montz, *How mandatory minimums helped drive mass incarceration*, Vox Media (Sep. 3, 2015), <https://www.vox.com/2015/9/3/9254545/mandatory-minimums-mass-incarceration>

ⁱⁱ See <https://www.alec.org/app/uploads/2016/03/2016-March-ALEC-CJR-State-Factor-Mandatory-Minimum-Sentencing-Reform-Saves-States-Money-and-Reduces-Crime-Rates.pdf> (the conservative American Legislative Exchange Council agrees that most experts believe that mandatory minimums for nonviolent, low-risk offenders is profoundly inefficient).

ⁱⁱⁱ Neither AOC nor NMCD tracks sentencing enhancements, as the enhancement sentence is tracked as part of the underlying felony sentence without distinction. As a result, it is impossible to determine the precise fiscal impact of this legislation.

^{iv} <https://www.sentencingproject.org/wp-content/uploads/2016/01/Deterrence-in-Criminal-Justice.pdf>; <https://www.aclu.org/issues/smart-justice/mass-incarceration/we-can-have-safer-communities-and-fewer-people-behind-bars?redirect=infographic/we-can-have-safer-communities-and-fewer-people-behind-bars>