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FISCAL IMPACT REPORT

ORIGINAL DATE 1-21-09

SPONSOR William, R LAST UPDATED _____ HB 22

SHORT TITLE Lifetime Ban on Firearm Possession SB _____

ANALYST Ortiz

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
NFI	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Responses Received From
 Public Defender Department
 Corrections Department
 District Attorneys

SUMMARY

Synopsis of Bill

House Bill 22 modifies existing law to establish a lifetime ban on possession of a firearm or a destructive device for a felon in the state of New Mexico.

FISCAL IMPLICATIONS

The Corrections Department relates that a possible rise in its costs could occur if the bill were to add to its inmate population.

SIGNIFICANT ISSUES

According to the Public Defender Department, felons are currently allowed to possess firearms and destructive devices under New Mexico law after ten years. However, federal law already bans for life the possession of firearms and destructive devices by felons. See 18 U.S.C. § 922. The U.S. government has an assistant U.S. attorney in every district specifically assigned to the prosecution of such cases under operation exile. Prosecution under the prospective law of those

felons convicted up until the prospective enactment of this bill into law would be subject to appellate challenges similar to that found in the Court of Appeals case of *State v. Shay*, 2004-NMCA-077, 136 N.M. 8, 94 P.3d 8. In *Shay*, two defendants argued that a legislative amendment to NMSA 1978, Section 31-18-17 (2002), prohibited the use of a conviction more than ten years old to enhance their sentences because the amendment became effective before their sentencing's. *Shay*, 2004-NMCA-077, ¶ 1. The Court of Appeals agreed with the defendants and held that the amended version of Section 31-18-17 applied, forbidding a habitual offender enhancement based on a conviction more than ten years old. *Shay*, 2004-NMCA-077, ¶ 9. While one of the defendants failed to preserve the issue in writing, the Court of Appeals observed that defendants are allowed to challenge the legality of their sentences for the first time on appeal because trial courts have no jurisdiction to impose illegal sentences. *Id.* ¶ 6 (citing *State v. Bachicha*, 111 N.M. 601, 605-06, 808 P.2d 51, 55-56 (Ct.App.1991)).

The district attorneys explain that the bill restores a valuable prosecution avenue that does not require an intimidated victim or witnesses to come forward to testify. It is a victimless crime frequently committed by recidivist, violent, and gang offenders, and would give prosecution more leverage in controlling criminals' behavior and keeping guns out of their hands. It will prevent gun possession by felons who have gone to the pen, who have been sentenced to the pen but had their sentence suspended, but will still not interfere with gun ownership of the "lesser" offenders who get conditional discharges or deferred sentences, and it also gives older and rehabilitated felons a means of restoring their gun ownership rights through the pardon process.

PERFORMANCE IMPLICATIONS

The district attorneys suggest that their ability to control the criminal element will increase because they will be able to proceed on cases without concern over losing a victim or not having witnesses other than law enforcement and court records. Public safety will increase, with fewer guns in the hands of our proven felons.

The Corrections Department contends that this bill would negatively impact its ability to perform prison-related and probation/parole supervision services (with current levels of staffing) if there were more than just a few additional convictions. However, it seems unlikely that a substantial or significant number of convicted felons would commit this new crime.

ADMINISTRATIVE IMPLICATIONS

Corrections Department also adds that if the bill passes and it substantially increases the inmate population or probation/parole caseloads, it would increase the workloads of current prison and probation/parole staff. However, it seems unlikely that a substantial or significant number of convicted felons would commit this new crime.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Prosecutors will continue to be hampered in their efforts to control the behavior of their most serious and recidivist offenders, who often can escape prosecution for long periods of time but are still known to be dangerous or have longstanding problems with the law.

POSSIBLE QUESTIONS

The Public Defender Department explained that federal law already bans for life the possession of firearms and destructive devices by felons (18 U.S.C. § 922), how would a state law enhance the existing federal law? What makes them both necessary?

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