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FISCAL IMPACT REPORT

BILL NUMBER: House Bill 146

SHORT TITLE: Felon in Possession of Firearm Penalty

SPONSOR: Chavez, N./Reeb/De La Cruz/Garratt

LAST UPDATE: 02/03/2026 **ORIGINAL DATE:** 02/02/2026 **ANALYST:** Sanchez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund
Courts/District Attorneys/Public Defender	No fiscal impact	See fiscal implications	See fiscal implications	See fiscal implications	Recurring	General Fund
Total	No fiscal impact	At least \$27.2	At least \$27.2	At least \$54.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Relates to House Bills 49 and 197

Sources of Information

LFC Files

Agency or Agencies Providing Analysis

Administrative Office of the Courts

Administrative Office of the District Attorneys

Law Offices of the Public Defender

New Mexico Sentencing Commission

Department of Public Safety

Corrections Department

SUMMARY

Synopsis of House Bill 146

House Bill 146 (HB146) seeks to amend Section 30-7-16 NMSA 1978 of the Criminal Code to increase penalties for the unlawful possession of firearms or destructive devices by individuals with prior felony convictions. The bill proposes three substantive changes to the existing statute. First, it increases the basic penalty for a felon found in possession of a firearm or destructive device. Under current law, such possession is a third-degree felony, typically punishable by up to three years imprisonment. HB146 increases the basic term of imprisonment to five years. The basic sentence remains subject to the sentencing criteria in Section 31-18-15 NMSA 1978, which allow judges to alter it.

Second, HB146 adds a new subsection to Section 30-7-16 to increase penalties for second and subsequent violations. Specifically, a person who is convicted a second or subsequent time of being a felon in possession of a firearm or destructive device would face an increased sentence.

Finally, the bill increases the penalty for a serious violent felon found in possession of a firearm or destructive device from a third-degree felony to a second-degree felony, increasing the basic sentence from three to nine years. If convicted of violating this subsection, a judge would be required to sentence a defendant to at least three years of imprisonment, effectively eliminating judicial discretion to impose a sentence of probation only.

Notably, the bill maintains the underlying definition of prohibited persons as felons, without expanding the class of individuals subject to the firearm possession prohibition. However, the addition of mandatory sentencing thresholds for both first-time and repeat offenses significantly alters the discretionary framework previously available to judges under New Mexico law.

The effective date of this bill is July 1, 2026.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail, and in the length of time they serve in those facilities, that might result from this bill, could have significant fiscal impacts. HB146 increases penalties for existing crimes by raising the basic sentence for felons in possession of firearms or destructive devices and introducing enhanced penalties for repeat offenders and serious violent felons. These provisions are anticipated to increase both the number of incarcerated individuals and the duration of incarceration.

The creation of a new five-year sentence category for third-degree felonies and the establishment of a second-degree felony for repeat offenses are expected to result in longer prison terms. Assuming a constant number of new admissions each year, increasing sentence lengths will reduce the number of releases relative to admissions, thereby increasing the total prison population. The New Mexico Sentencing Commission reports that, as of June 30, 2024, 92 individuals were incarcerated for felon-in-possession offenses, with an average expected length of stay of 2.2 years and a median of two years. By increasing sentencing floors and ceilings, HB146 may increase the average length of stay for this population.

The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY25 was \$61.5 thousand annually. However, due to high fixed facility and administrative costs, the Legislative Finance Committee (LFC) estimates a marginal cost of \$27.2 thousand per additional inmate per year. If HB146 results in increased incarceration beyond current levels, these marginal costs will likely compound over time. While NMCD's analysis anticipates minimal short-term fiscal impact, the cumulative effect of increased admissions and longer incarceration periods could increase long-term costs to the state.

Increased penalties may also affect other components of the criminal legal system. The Law Office of the Public Defender estimates that felony cases of this nature require experienced attorneys, with annual staffing costs exceeding \$292 thousand per position when accounting for support staff and overhead. The 2022 ABA and Moss Adams workload study found that New

Mexico requires more than 600 additional full-time public defenders to meet national workload standards, suggesting that any increase in case complexity or volume could exacerbate existing capacity issues. Additionally, as the Administrative Office of the District Attorneys notes, enhanced penalties may lead to more contested cases and higher trial rates, thereby increasing demands on judicial and prosecutorial resources.

Although these impacts are difficult to quantify precisely, the bill's provisions that expand the scope of prohibited conduct (to include receiving and transporting firearms or destructive devices) and increase the severity of penalties are expected to increase total incarceration costs to the state. Additional system costs beyond incarceration—such as increased trial activity—are not included in this analysis but could be significant. Long-term cost impacts may grow as more individuals serve extended sentences under the enhanced provisions.

SIGNIFICANT ISSUES

HB146 introduces several structural changes to New Mexico's sentencing framework that may affect consistency and proportionality within the broader criminal code. By establishing a new fixed five-year term for a third-degree felony and a nine-year term for a second-degree felony based on repeat offenses, the bill departs from the uniform penalty ranges traditionally provided under Section 31-18-15 NMSA 1978. This departure may contribute to further stratification in the code, where individual statutes prescribe specific sentences rather than relying solely on the standardized felony sentencing framework. While the bill removes an existing special penalty—a six-year basic sentence for serious violent felons in possession of a firearm—it simultaneously adds new, nonstandard penalties for other categories of offenders, reinforcing the ongoing complexity of the state's sentencing architecture.

In addition, the bill modifies the statutory definition of “felon” in Section 30-7-16 to exclude individuals who have completed deferred sentences under Section 31-20-9 NMSA 1978. This exclusion may narrow the scope of those subject to prosecution under this statute and delineate the distinction between deferred adjudication and formal conviction. While this clarification may improve statutory alignment with judicial practice, it may also require coordination with law enforcement and courts to ensure uniform interpretation and application across jurisdictions.

Another notable issue is the lack of specificity in how second or subsequent convictions are to be counted under the new enhancement provision. The bill does not clarify whether out-of-state convictions qualify, whether a prior conviction must be final, or whether multiple counts within a single case would be treated as separate offenses for enhancement purposes. These ambiguities may require judicial interpretation or future legislative amendment to ensure consistent enforcement and avoid unintended disparities in sentencing.

Finally, while the bill focuses on enhancing penalties, research shows that the certainty of apprehension and conviction plays a greater role in deterring criminal behavior than the severity of punishment. Recent LFC evaluations found that accountability for felony offenses in some jurisdictions, such as the 2nd Judicial District, has declined even as crime rates have risen. Arrests, convictions, and prison admissions did not track with increases in felony crime, suggesting that systemic gaps in enforcement and adjudication may influence outcomes more than statutory sentence length. These findings highlight the importance of systemwide coordination, especially when policy changes involve increased penalties or expanded enforcement authority.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB146 relates to both House Bill 49 and House Bill 197; all three propose changes to criminal firearm statutes involving individuals with felony convictions. HB49 similarly increases penalties for felons in possession of firearms and establishes new sentencing tiers, while HB197 proposes a broader framework for firearm prohibitions, including new qualifying offenses and enhanced penalties.

TECHNICAL ISSUES

The Department of Public Safety notes that HB146 creates a new sentencing enhancement for a second or subsequent offense of felon in possession but does not specify how prior convictions should be counted. The bill does not specify whether out-of-state convictions qualify, whether prior convictions must be final to trigger enhancement, or whether multiple counts in a single case would constitute separate offenses. Absent clarification, these ambiguities may result in inconsistent application across jurisdictions and could require judicial interpretation or future amendment to ensure uniform enforcement.

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