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FISCAL IMPACT REPORT

SPONSOR <u>Hochman-Vigil</u>	LAST UPDATED _____
	ORIGINAL DATE <u>1/27/24</u>
SHORT TITLE <u>Felon in Possession of Firearm Penalty</u>	BILL NUMBER <u>House Bill 198</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
NMCD			At least \$910.8	At least \$910.8	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Conflicts with HB46
 Relates to HB47, HB78, HB79, HB88, HB101, HB114, HB127, HB129, HB168; SB5, SB69, SB90 and SJR12

Sources of Information

LFC Files

Agency Analysis Received From
 Administrative Office of the Courts (AOC)
 Department of Public Safety (DPS)
 Law Offices of the Public Defender (LOPD)
 New Mexico Corrections Department (NMCD)
 New Mexico Sentencing Commission (NMSC)

SUMMARY

Synopsis of House Bill 198

House Bill 198 increases the degree of felony and the penalty for a felon in possession of a firearm from a third degree to a second degree felony, and from a three year sentence to a nine year sentence. It also increases the degree of felony for a serious violent felon from a third degree to a second degree felony, and increases the penalty from six to 12 years. It also denies eligibility to a felon convicted under this law for earned meritorious deductions.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so any changes in the number of individuals in prison and jail and the length of time served in prison and jail that might result from this bill could have significant fiscal impacts. The creation of any new crime, increase of felony degree, or increase of sentencing penalties will likely increase the population of New Mexico's prisons and jails, consequently increasing long-term costs to state and county general funds. In addition to the potential for new crimes to send more individuals to prison and jail, longer sentences could result in fewer releases relative to admissions, driving up overall populations. The Corrections Department (NMCD) reports the average cost to incarcerate a single inmate in FY22 was \$54.9 thousand; however, due to the high fixed costs of the state's prison facilities and administrative overhead, LFC estimates a marginal cost (the cost per each additional inmate) of \$26.6 thousand per year across all facilities. HB198 is anticipated to increase the time individuals spend incarcerated.

Non-Serious Violent Felons in Possession. In FY22, 1,196 people were admitted to prison for offenses that were not serious violent offenses, 82 percent of overall admissions. Assuming a similar share of the 39 individuals admitted to prison with their highest charge being felon in possession of a firearm in FY21 were admitted for offenses other than serious violent offenses, this change would increase the sentences of about 32 individuals each year. Because these inmates are not entitled to good time under HB198, they will serve at least an additional six years in prison, a cost of \$159.6 thousand per offender. Overall, this analysis estimates HB198 will result in increased incarceration costs of \$751.2 thousand per year.

Serious Violent Felons in Possession. Based on those same FY22 figures, approximately six people will face increased sentences under the serious violent felons provisions of HB198. Again, because they will not be entitled to good time, they will serve an additional nine years in prison, at the additional cost of \$159.6 thousand per offender. These additional costs will begin to be realized in FY28, increasing over the following fiscal years.

The additional cost for both categories total \$910.8 thousand a year, increasing over the following fiscal years. These costs are likely an underestimate, as felon in possession of a firearm is often not the highest charge for which someone is admitted to prison. Last year, NMCD estimated 10 percent of the New Mexico prison population, or close to 540 individuals, were serving time for this crime.

Additional increased system costs beyond incarceration, such as costs to the District Attorneys, LOPD, and judicial branch for increased trials (if more defendants invoke their right to a trial when facing more serious penalties), are not included in this analysis, but could be significant.

SIGNIFICANT ISSUES

Research shows the certainty of being caught is a more powerful deterrent to crime than severity of punishment, and although laws and policies designed to deter crime focus mainly on increasing the severity of the punishment, this does little to deter criminals because most know little about sanctions for specific crimes. These findings suggest increasing penalties for crimes is unlikely to produce a significant impact on crimes committed. Incarceration (and length of incarceration) has also been shown to have a criminogenic effect, meaning time in jail or prison may make people more likely to commit crimes in the future.

Prioritizing solving crimes and securing convictions, particularly for serious offenses, could be much more impactful than increasing penalties. In New Mexico, however, punishment has grown less certain as crime has increased, with fewer violent crimes solved and more violent felony cases dismissed. LFC’s evaluation team has found in the 2ⁿ Judicial District (Bernalillo County) specifically, neither arrests, convictions, nor prison admissions have tracked fluctuations in felony crime, and in 2020, when felonies began to rise, accountability for those crimes fell. Improving policing and increasing cooperation and coordination among criminal justice partners could help increase the certainty of punishment for the most violent offenses and provide a stronger deterrent to serious crime than heightened penalties.

LOPD first points out that the Legislature has increased penalties for this crime three times in the last four years: In 2020, the penalty was increased from a fourth degree to a third degree felony for serious violent offenders. In 2021, the distinction was removed and the penalty for even non-violent offenders was increased to a third degree felony. In 2022, the basic sentence for serious violent offenders was increased to six years (leaving the non-violent offenders at three years). HB198—increasing the sentence for non-violent offenders to nine years, and that for serious violent offenders to 12 years—would be the fourth increase in five years.

LOPD also comments that, unlike sentencing enhancements for using a firearm during the commission of another, perhaps violent crime, this section punishes a felon for simply possessing a gun, which does not present the same level of risk or danger associated with violent felonies like armed robbery or aggravated burglary. Further, LOPD reports that by definition, individuals charged with this crime have a prior felony conviction, the majority will already be subject to the habitual offender enhancements to the existing sentence, which involve a one, four, or eight year increase in sentence depending on the number of prior felony cases. As a result, LOPD comments, for the most egregious repeat offenders, the existing basic sentence could easily be 11 years for non-violent offenders or 14 years for serious violent offenders even if this bill were not enacted.

LOPD argues that precluding earned meritorious deductions for this crime is inconsistent with the provision of the Earned Merit Deductions Act. All “nonviolent offenses” are eligible for earning “good time”, and possession crimes such as those addressed in HB198 are necessarily non-violent. Further, LOPD advises, good time is a prison management tool designed not just to discourage misbehavior, but also to encourage rehabilitative efforts such as programming, education, treatment, and working jobs within the prison.

On the other hand, DPS advises that felon in possession of a firearm has become a common charge, and cases are not prosecuted federally due to the low state penalty. DPS argues that any step to decrease the number of armed criminals in public would be beneficial.

PERFORMANCE IMPLICATIONS

LOPD notes that, if charged alongside other charges, felon in possession charges almost always severed from the other counts to avoid informing the jury of a defendant’s “felon” status when it considers the other allegations, thus requiring two trials and not just one. It should be noted that this occurrence will impact the district attorneys and the courts as well.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

NMSC notes this bill (HB198) conflicts with HB46. HB46 adds “or destructive device” to both the felon and serious violent felon in possession of a firearm section. As to serious violent felons in possession, it changes the degree of felony designation from third to second but does not specify the sentence to be imposed. HB46 does provide that a second or subsequent violation of this section by a non-serious violent felon constitutes a second degree felony. HB46 also strikes from the definition of felon the requirement that less than 10 years have passed since the felon has completed a sentence or period of probation for the underlying felony.

Numerous other bills introduced in the 2024 legislative session relate to firearms in some way.

OTHER SUBSTANTIVE ISSUES

NMSC points out that HB198’s penalty for serious felons in possession of a firearm, which is a second degree felony carrying a 12 year sentence, is a special penalty outside the basis sentencing structure currently in statute. It adds the following:

The New Mexico Sentencing Commission is presently undertaking a review and update to the state’s Criminal Code. As part of this process, the Commission engaged the services of the Robina Institute of Criminal Law and Criminal Justice at the University of Minnesota to analyze the Criminal Code for its strengths and weaknesses. One item of concern for the Robina Institute was that the Criminal Code has a number of special statutes that fall out of the normal penalty structure in the state. HB198 would add two additional special penalties into the Criminal Code.

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