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## FISCAL IMPACT REPORT

**SPONSOR** Rehm **ORIGINAL DATE** 02/03/21  
**LAST UPDATED** 02/11/21 **HB** 81  
**SHORT TITLE** Unlawful Weapons While Trafficking **SB** \_\_\_\_\_  
**ANALYST** Rabin

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	FY24	4 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	\$0.0	\$0.0	\$0.0	\$866.9 - \$1,083.6	\$866.9 - \$1,083.6	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to House Bill 62

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the District Attorneys (AODA)  
 Public Defender Department (PDD)  
 Attorney General's Office (NMAG)  
 Department of Health (DOH)  
 Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Administrative Office of the Courts (AOC)  
 Sentencing Commission (NMSC)  
 Department of Homeland Security and Emergency Management (DHSEM)

### SUMMARY

#### Synopsis of Bill

House Bill 81 creates a new third degree felony crime of carrying a firearm while trafficking controlled substances. Under current law, a third degree felony is punishable by up to three years in prison and a \$5,000 fine.

The effective date of HB81 is July 1, 2021.

## FISCAL IMPLICATIONS

The most significant fiscal impact of this bill will likely be an increase in the prison population, which this analysis conservatively estimates would cost between \$1 million and \$1.3 million annually.

The Administrative Office of the District Attorneys (AODA), the Public Defender Department (PDD) and the Department of Health (DOH) all report drug traffickers often possess firearms while engaging in trafficking activities. The Sentencing Commission (NMSC) reports 156 individuals were admitted to New Mexico's prison system for drug trafficking offenses in FY20; this analysis assumes a similar number of individuals will be admitted for drug trafficking in future years.<sup>1</sup> Based on the information provided by responding agencies, this analysis assumes 50 percent of individuals admitted to prison for drug trafficking offenses will also receive a sentence for unlawful carrying of a firearm while trafficking a controlled substance under this bill (a total of 78 individuals).

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 long-term costs to the general fund. In addition to the potential of new crimes to send more individuals to prison, increased sentence lengths decrease releases relative to the rate of admissions, pushing the overall prison population higher. The Corrections Department reports the average cost to incarcerate a single inmate in FY20 was \$44.8 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 \$23.3 thousand per inmate per year across all facilities.

Unlawful carrying of a firearm while trafficking a controlled substance is a third-degree felony under this bill, punishable by up to three years in prison. However, NMSC estimates the length of stay for individuals convicted of this crime would be extended by six to seven months (the sentence length served reflecting any earned meritorious deduction, not the sentence from the court). The cost to incarcerate 78 inmates for an additional six months is projected to be \$866.9 thousand per year. The cost to incarcerate 78 inmates for an additional seven months is projected to be \$1.1 million. These costs would result in recurring impacts to the general fund.

Because it is unlikely inmates currently serving a sentence for trafficking controlled substances will subsequently be charged for possessing a firearm at the time of that offense, the impact of this bill will likely only be realized after offenders convicted in FY22 of both trafficking controlled substances and carrying a firearm while doing so have served the term of their sentence for trafficking and are beginning the additional six- to seven-month term for carrying a firearm imposed by this bill. In FY20, offenders convicted of drug trafficking served 2.4 years in prison on average (again reflecting the actual time served, accounting for earned meritorious deduction, not the sentence from the court), so the impact of this bill would not begin to be

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<sup>1</sup> Notably, NMSC only has access to data on the highest crime charged for each individual. As a result, there may be offenders admitted to prison due to drug trafficking in addition to higher-level offenses who could also be charged with unlawful carrying of a firearm while trafficking a controlled substance under this bill. Additionally, the 156 offenders admitted due to drug trafficking as their highest offense in FY20 represents a significant decline from those admitted in previous years (which averaged 270 per year between FY15 and FY19), and could be an outlier due to the Covid-19 pandemic's impact on case adjudications in FY20. This will likely result in a conservative cost estimate.

realized until FY24.<sup>2</sup>

Because the additional third-degree felony imposed by this bill carries up to a three-year sentence, PDD and the Administrative Office of the Courts (AOC) suggest defendants may be less likely to take a plea and prefer to take the matter to trial. If more trials result, PDD may need to hire more trial attorneys with greater experience, but states that an accurate prediction of the fiscal impact is not possible at this time; assessment of the required resources would be necessary if and when the higher-penalty scheme proposed by HB81 is implemented. AOC notes more trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees, but could not quantify what those costs would be, as any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions. AODA also projects trials could increase with the implementation of this bill. Because these cost increases cannot be projected, they are not included in the total additional operating budget impact table of this analysis.

### **SIGNIFICANT ISSUES**

AODA and NMCD note that federal statutes already allow or an enhanced sentence of five years for trafficking convictions involving a firearm, and DOH adds that most states also have increased penalties for use of a firearm while trafficking controlled substances. NMCD also notes that this bill will allow for concurrent jurisdiction with federal prosecutions, possibly leading to a significant increase in state prosecutions. At present, NMCD explains that this specific crime is solely enforced in the federal courts and state law enforcement must refer otherwise state prosecutions to the U.S. Attorneys for their consideration. However, the agency also notes that the penalties under federal law remain stricter.

PDD notes that use of a firearm during the commission of a felony is addressed in Section 31-18-16 NMSA 1978, and the separate crime of felon in possession of a firearm is addressed in Section 30-7-16 NMSA 1978. The agency adds that both of these statutes underwent a comprehensive overhaul as part of the governor’s crime package during the 2020 regular legislative session. Office of Attorney General adds that “brandishing” a firearm while trafficking controlled substances would remain a sentencing enhancement under Section 31-18-16 NMSA 1978.

### **PERFORMANCE IMPLICATIONS**

AOC states that the courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

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<sup>2</sup> Although Section 30-31-20 NMSA 1978 makes an initial trafficking offense a second-degree felony (punishable by up to nine years in prison) and makes further offenses first-degree felonies (punishable by up to 18 years in prison), these cases often have long suspended sentences. According to the Sentencing Commission, the average time served for an offender convicted under these statutes was 871 days in FY20.

## **ADMINISTRATIVE IMPLICATIONS**

AOC also notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes.

## **RELATIONSHIP**

HB81 relates to House Bill 62, which imposes a statute of limitations of six years for prosecuting first-degree trafficking of controlled substances in violation of Section 30-31-20 NMSA 1978.

## **OTHER SUBSTANTIVE ISSUES**

DOH notes that New Mexico had the twelfth highest drug overdose death rate among all states in 2019, which the agency anticipates will increase in 2020. The agency also notes that the firearm death rate in New Mexico was 53 percent higher than the country in 2017 and increased further in 2018. DOH adds that New Mexico has generally more relaxed gun laws and major substance abuse problems relating to alcohol, methamphetamine and opioids, among others.

According to DOH, while qualitative research indicates that the demographics of people who sell drugs are significantly more diverse than stereotypes suggest, quantitative data on who is involved with the supply side of the drug economy is sparse and difficult to gather. There are much better data about who is criminalized for drug selling and distribution than for those actually supplying drugs. Those who are arrested for supply-side drug market activity come largely from marginalized communities and have roles at the lowest rungs of drug supplying hierarchies. This includes people who use drugs, people living with poverty, people of color, non-citizens and women.

## **ALTERNATIVES**

DOH notes that designing and implementing policies and programs to prevent the initiation of drug dealing and decrease involvement in drug dealing may help to substantially reduce unlawful firearm carrying and firearm violence.

ER/al/rl