

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website ([www.nmlegis.gov](http://www.nmlegis.gov)).

## FISCAL IMPACT REPORT

**SPONSOR** Sedillo Lopez      **ORIGINAL DATE** 02/16/21  
**LAST UPDATED** 03/01/21      **HB** \_\_\_\_\_  
**SHORT TITLE** Crime of Failure to Secure Firearm      **SB** 224/aSHPAC  
**ANALYST** Eckberg

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

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		See Fiscal Implications				

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to SB142, HB166, HB102, HB193

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorneys (AODA)  
 Department of Public Safety (DPS)  
 New Mexico Attorney General (NMAG)  
 New Mexico Corrections Department (NMCD)  
 New Mexico Department of Health (DOH)  
 New Mexico Sentencing Commission (NMSC)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of SHPAC Amendment

The Senate Health and Public Affairs Committee amendment to Senate Bill 224 deletes Paragraph F of Section 1, providing that a minor may be an “authorized user” if they are at least 12 years of age and successfully passed a firearm safety training course, in its entirety. This makes it possible for a minor under 18 years of age, and now younger than 12 years of age, to be an “authorized user” if they have been granted permission to access the firearm.

Synopsis of Original Bill

Senate Bill 224 creates a new section of the Criminal Code to establish the crime of failure to secure a firearm and provides for a penalty. The bill creates a petty misdemeanor punishable by a fine not to exceed \$500 if a firearm owner or authorized user fails to secure a firearm in a locked container, by gunlock, or by other means that would render the firearm inaccessible or unusable to any person who is not the owner or an authorized user.

It also creates a misdemeanor punishable by a fine not to exceed \$1 thousand if the firearm owner or authorized user fails to secure a firearm in a locked container, by gunlock, or by other means that would render the firearm inaccessible or unusable to any person who is a minor, at-risk person, or other prohibited person. If failure to secure a firearm results in the use of the firearm in a crime or to injure that person or others, the penalty is enhanced to the penalties prescribed in Subsection A of Section 31-19-1 NMSA 1978.

A firearm is lawfully stored if it is carried by or under the direct control of the owner. A minor can be an authorized user of the firearm if they are at least 12 years old and have successfully completed a firearm safety training course.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

**FISCAL IMPLICATIONS**

Administrative Office of the Courts (AOC) notes laws relating to gun safety are likely to be challenged in the courts, resulting in increased case filings. There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and commenced prosecutions for the newly-created crime of “Failure to Secure a Firearm.” New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

Public Defender Department (PDD) indicates though there may likely be few prosecutions under this bill any increase in the number of prosecutions brought about by the cumulative effect of this and all other proposed criminal legislation would bring a need for funding to maintain compliance with constitutional mandates.

The Administrative Office of the District Attorneys (AODA) notes enacting new crimes and penalties could require more resources for police agencies, prosecutors, courts, and probation agencies.

The bill does not include an appropriation.

**SIGNIFICANT ISSUES**

Department of Public Safety (DPS) indicates they do not have established specifications for “locked container” as referenced in Subsection G of this bill. DPS recommends that any intended specifications be described in the bill.

PDD expressed concern about “locked container” being in the definitions section of the bill, as the Legislative Council Service’s drafting manual guidelines say that substantive law should not be included in the definition section. Since DPS does not have guidelines on what a locked container is, PDD recommends moving the language into a subsection of the bill.

AODA notes there may be challenges to the statute based on the New Mexico Constitution, Article II, Section 6 and Second Amendment of the United States Constitution.

Though there may be legal challenges to firearm storage and lock requirements the American Bar Association (ABA) passed a resolution urging federal, state, local territorial, and tribal governments to enact statutes, rules and regulations defining requirements of safe storage of a firearm and require firearm owners to meet those requirements. ABA makes the argument that safe storage laws are a constitutional means to protect the public from preventable suicides, tragic accidents, and crime, while respecting Americans’ Second Amendment rights. According to a recent Legislative Finance Committee program evaluation, New Mexico had the nation’s highest suicide rate in 2018, although rates decreased slightly in 2019. According to the evaluation, firearms were used in over half of all suicide deaths in New Mexico in 2019 and determining how to keep guns safely stored and less accessible to individuals who are suicidal can help reduce deaths.

Department of Health (DOH) indicates unpublished data from the New Mexico Behavioral Risk Factor Surveillance System (BRFSS) collected between January and June of 2019 reported that 40 percent of people in New Mexico have a gun in their home. Of those that had a firearm in the home, 35 percent reported the firearm was loaded. Of New Mexicans who have a loaded firearm in their home, more than half, or 59 percent, report storing their firearm unlocked and loaded. Additionally, research shows that the greatest reductions in gun-related homicides, suicides, and unintentional injuries among persons under 18 years of age occurred in states with a requirement for safe storage of firearms.

## **PERFORMANCE IMPLICATIONS**

AOC notes the courts are participating in performance-based budgeting and that 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

Courts will be required to develop performance measures relevant to the processing of additional payable citations and to track the efficiency with which courts collect fines and fees from these additional citations.

## **TECHNICAL ISSUES**

New Mexico Attorney General (NMAG) notes Section A states that an owner or authorized user of a firearm must secure it within any premises, but does not mention automobiles, where firearms are often kept. Section G(2) does not define whether the person granting the permission must be the owner of a firearm or could be another actor. NMAG notes Section G(7) does not identify which state laws restrict gun possession and suggests citations to, Section 30-7-16 NMSA 1978 and Section 40-17-6. NMSA 1978.

NMAG also notes Section G (7) defines a "prohibited person" as "a person who comes within the prohibitions set forth in Subsection g of 18 U.S.C. Section 922 or who is prohibited by state law from possessing a firearm." Title 18, Section 922(g)(1) of the U.S. Code bans a person from possessing a firearm for life following conviction of a crime punishable by more than one year of imprisonment. This provision was deemed unconstitutional in an as-applied challenge by a defendant whose crime was punishable by more than a year in prison but was not serious enough to warrant the firearm ban. See *Miller v. Sessions*, 356 F. Supp. 3d 472, 485 (E.D. Pa. 2019).

PDD notes the penalty provisions in Subsections D and E appear to contemplate a fine-only penalty unless a person commits a crime with the unsecured firearm, but omits the typical language that would bar a sentence of incarceration making the bill unclear whether a jail sentence is available for a basic violation.

### **AMENDMENTS**

DOH recommends adding the following language to page 3, line 10 after "firearm": "Authorized usage for minors shall be granted for each specific event of firearm use (and not general use), such as hunting or target practice, for example."

NE/sb/al