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FISCAL IMPACT REPORT

SPONSOR Rehm ORIGINAL DATE 1/24/2022
LAST UPDATED 2/4/2022 HB 26

SHORT TITLE Unlawful Firearms While Trafficking SB _____

ANALYST Rabin

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY26	FY27	FY28	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$162.6	\$444.0	\$703.0	\$1,309.6	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the District Attorney (AODA)

Administrative Office of the Courts (AOC)

Corrections Department (NMCD)

Attorney General's Office (NMAG)

Public Defender Department (PDD)

Department of Public Safety (DPS)

Sentencing Commission (NMSC)

SUMMARY

Synopsis of Bill

House Bill 26 creates the third-degree felony crime of unlawful carrying of a firearm while trafficking a controlled substance, consisting of carrying a firearm while violating the provisions of Section 30-31-20 NMSA 1978, governing the trafficking of controlled substances. HB26 provides that, as used in the Act, "firearm" means a weapon "that will or is designed to or may readily be converted to expel a projectile by the action of an explosion or the frame or receiver of any such weapon."

The effective date of the Act is July 1, 2022.

FISCAL IMPLICATIONS

Incarceration drives costs in the criminal justice system, so the primary fiscal implications examined in this analysis relate to changes in the length of time individuals serve in prison that

might result from this bill. 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 FY21 was \$49.6 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 \$23.4 thousand per inmate per year across all facilities. This bill will likely increase the time individuals spend incarcerated.

Although HB26 creates a new crime, the crime of unlawful carrying of a firearm while trafficking a controlled substance requires an individual to also be convicted of the crime of trafficking a controlled substance. As a result, HB26 functions more as a sentence enhancement than a new crime. HB26 is not anticipated to result in more individuals being admitted to prison—those individuals would already be admitted to prison for drug trafficking—but is anticipated to increase the amount of time they spend there.

Overall, this analysis estimates HB26 will result in additional incarceration costs of \$703 thousand per year. Based on the number of individuals admitted to prison for drug trafficking in FY21 (123) and the percent of state prisoners incarcerated for drug trafficking who possessed a firearm at the time of their arrest according to a 2019 DOJ report (9.4 percent),¹ this analysis estimates the changes proposed by HB26 will impact approximately 12 individuals annually. Based on the average time served for individuals released from prison in FY21 whose highest charge was for a third-degree felony, these 12 individuals will spend an additional 912 days in prison each due to the new crime created by this bill, a cost of \$58.6 thousand per offender.

Because HB26 effectively enhances the sentence for an existing crime, the fiscal impacts of this change are not anticipated to be realized until the first group of offenders admitted under the enhanced sentence have served the term they would have served under the original sentence. Under the original sentence, offenders serve an average of about 2.5 years (based on the average time served for offenders released from prison in FY21 whose highest charge was for drug trafficking), but this bill is anticipated to lead them to serve an *additional* 2.5 years in prison. As a result, offenders admitted to prison in FY24 under HB26 would begin to impact costs in FY26. As more people are admitted to prison, costs increase. Costs continue to rise for each year until FY28, when offenders admitted in the first year the change takes effect begin to leave prison after serving the additional time.

This analysis does not include potential benefits of crime deterrence due to increased punishment, as research shows sentence length has little to no deterrent effect. Certainty of being caught is a significantly more effective deterrent to criminal behavior than the severity of punishment if convicted.

Additional system costs beyond incarceration, such as additional costs to the judicial branch for increased trials, are not included in this analysis, but may exist. As per AOC

¹ <https://bjs.ojp.gov/content/pub/pdf/suficspi16.pdf>

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, and appeals from convictions. 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.

As penalties become more severe, more defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Indigent offenders are entitled to public defender services.

SIGNIFICANT ISSUES

HB26 effectively enhances a sentence for drug trafficking in certain circumstances (having a firearm). 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 2nd 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.

As per AOC

1) As penalties become more severe, more defendants may invoke their right to trial and their right to trial by jury. More trials and more jury trials will require additional judge time, courtroom staff time, courtroom availability, and jury fees. Indigent offenders are entitled to public defender services.

2) Under Section 31-18-15(A) NMSA 1978, the basic sentence of imprisonment for a third-degree felony is three years imprisonment. Subsection D also permits the court to impose a fine of \$5,000 or less for a third-degree felony.

3) As early as February 2021, Albuquerque law enforcement leadership has stated that there is a link between drugs and homicide. <https://www.kob.com/new-mexico-news/drugs-social-media-reportedly-fueling-crime-in-albuquerque/6001723/> and <https://www.kob.com/albuquerque-news/apd-has-made-10-arrests-in-citys-40-homicides-in-2021/6088533/#.YIidS1eq11k.twitter>.

4) In New Mexico, the possession of a firearm is a crime when it is by a person under the age of nineteen (19) per Section 30-7-2.2 NMSA 1978; by those listed in Section 30-7-16(B) which includes felons, persons subject to an order of protection, and those convicted of certain crimes; or when considered a deadly weapon by being both concealed and loaded per Section 30-7-2 NMSA 1978. When a firearm is brandished in the commission of a noncapital felony, Section 31-18-16 NMSA 1978 provides for firearm enhancements and alterations to the basic sentence for the crime for which the person has been convicted. HB26 makes the possession of a firearm while committing trafficking a new crime, whether or not the firearm was loaded, concealed, or brandished. Currently, no law precludes a firearm enhancement, under Section 31-18-16 NMSA 1978, for a trafficking conviction when a weapon is brandished.

Additionally, HB26 would require that the state prove the defendant possessed a firearm in addition to proving the crime of trafficking from Section 30-31-20 NMSA 1978. HB26 does not include whether the conviction or admission to this act alone, without a simultaneous conviction for trafficking, would constitute a conviction of trafficking in subsequent prosecutions under Subsection 30-31-20(B)(2) NMSA 1978.

PERFORMANCE IMPLICATIONS

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.

ER/acv